

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	Criminal No. 1:07CR209
v.	)	
	)	Hon. T.S. Ellis, III
WILLIAM J. JEFFERSON,	)	
	)	Motion Hearing: June 13, 2008
Defendant.	)	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S  
MOTION TO TAKE FOREIGN DEPOSITIONS**

The United States, by and through undersigned counsel, files this opposition to Defendant Jefferson’s motion to take foreign depositions of the former Vice President of Nigeria, Atiku Abubakar; one of his wives, Jennifer Douglas Abubakar; and a Nigerian businessman, Suleiman Yahyah. (DE# 184, 185, 186.)<sup>1</sup> The bar to obtaining a foreign deposition is high as courts have permitted such extraordinary measures in only rare instances. Defendant Jefferson has not met this heavy burden, and the Court should deny this motion in its entirety.

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<sup>1</sup> Defendant Jefferson’s initial motion, DE# 184, was followed by the filing the next day of what appear to be two identical motions, DE# 185 and 186. Because these three filings are verbatim, the government is filing only this single reply. Incidentally, the government notes that currently pending before the Fourth Circuit is an interlocutory appeal filed by Defendant Jefferson. One treatise has described this situation this way: “[A] properly filed notice of appeal will transfer jurisdiction from the district court to the court of appeals. The transfer will affect only those matters involved in the appeal, not matters separate from or collateral to the appeal.” Ides, “The Authority of a Federal District Court to Proceed After a Notice of Appeal Has Been Filed,” 143 F.R.D. 307, 326 (1992). As such, the government wanted to provide a timely response to Defendant Jefferson’s motion without presuming how the Court would resolve the jurisdictional issue.

### INTRODUCTION

The government would welcome the opportunity to cross-examine these three prospective witnesses -- who are, as the defense correctly notes, unindicted co-conspirators -- under oath before this Court and a jury during the trial of this matter. But that is not what Defendant Jefferson proposes. Instead, he proposes that a deposition of Mrs. Abubakar be taken at a location of her choosing somewhere in Europe where she is not subject to criminal penalties for perjury and obstruction of justice. Unfortunately for Defendant Jefferson and Mrs. Abubakar, who is a U.S. citizen, there is a statutory mechanism by which her testimony can be compelled before *this* Court in *this* country at trial of *this* case; an issue not addressed in Defendant Jefferson's motion. And with regard to Vice President Abubakar and Mr. Yahyah, Defendant Jefferson proposes that the government be forced to utilize an international treaty in a manner inconsistent with its own terms -- or, in the alternative, that the Court seek recourse from an unnamed Nigerian judicial body -- so that these two men can be tracked down and then forced to testify, again, without having their testimony be subject to criminal penalties in the United States. Defendant Jefferson seeks these efforts in a country where, according to a recent State Department report, corruption is massive, widespread, and pervasive at all levels of the government. Even if this grand misadventure were successful in securing their testimony, which is very unlikely, such testimony will be highly suspect and its veracity profoundly dubious.

What this plan, of course, would most assuredly do -- even if only letters rogatory were issued by this Court -- is further delay this case for an undetermined amount of time as the matter winds its way through the maze of international protocols and various Nigerian courts. A delay that could have been avoided, or at least mitigated, had Defendant Jefferson not waited until nearly a year

after his indictment to raise this issue, particularly when the denials of involvement by Vice President Abubakar and Mr. Yahyah were made publicly long before the Indictment was returned against Defendant Jefferson and when Defendant Jefferson's team of lawyers were almost certainly in contact with counsel for these witnesses long, long ago.

### **FACTUAL & PROCEDURAL BACKGROUND**

As the Court knows, Atiku Abubakar was the Vice President of Nigeria during the time period charged in the Indictment in the instant case. He is referred to in the Indictment as "Nigerian Official A." Ind. ¶ 11. In an audio recording produced to the defense in discovery, Defendant Jefferson describes Vice President Abubakar as "really corrupt" and the "briefcase business guy."<sup>2</sup> Jennifer Douglas Abubakar is one of Vice President Abubakar's wives. She is referred to in the Indictment as "Nigerian Official A's Spouse." *Id.* Mrs. Abubakar is a United States citizen, and, at the time of the events set forth in the pending Indictment, she was a graduate student living in a mansion in Potomac, Maryland -- a mansion she still appears to own. Aug. 3, 2005 Photos of 9731 Sorrel Avenue, Ex. 1; Montgomery Cty. Property Tax Rec. for 9731 Sorrel Avenue, May 19, 2008, Ex. 2.<sup>3</sup> As the Indictment makes clear, Defendant Jefferson used Mrs. Abubakar as a knowing conduit between himself and Vice President Abubakar. For example, the Indictment alleges that on or about June 24, 2005, Defendant Jefferson met with a cooperating witness and advised her that he

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<sup>2</sup> Defendant Jefferson is not alone in his assessment of Vice President Abubakar, as Vice President Abubakar's own government has leveled allegations of corruption against him. *See, e.g., Vanguard (Nigeria), EFCC Report - Ministerial Panel Lacks Power to Pronounce Me Guilty - Atiku*, Sept. 9, 2006, 2006 WLNR 15761952 ("The panel headed by the Attorney General and Minister of Justice, Chief Bayo Ojo, had indicted the Vice President for allegedly using public fund [*sic*] to promote his individual business interest and that of his friends.").

<sup>3</sup> Mrs. Abubakar appears to own another property in Potomac, Maryland, as well. Montgomery Cty. Property Tax Rec. for 12555 Ansin Circle, May 20, 2008, Ex 3.

had provided Mrs. Abubakar with a description of the project and investment information so that Vice President Abubakar would see it and “salivate over what the opportunities are there.” Ind. ¶ 112. These interactions ultimately resulted in a July 18, 2005 meeting at the Abubakar’s Potomac mansion where Defendant Jefferson met privately with Vice President Abubakar and offered to pay a bribe to him, later telling a cooperating witness that Vice President Abubakar had agreed to accept a bribe in exchange for Vice President Abubakar’s official assistance.<sup>4</sup> Ind. ¶¶ 122-23.

During times relevant to the Indictment, Suleiman Yahyah was the owner of Rosecom.Net, which was a Nigerian Internet service provider. Ind. ¶ 36. Mr. Yahyah is referred to in the Indictment as “Nigerian Businessman B.” *Id.* It was Mr. Yahyah whom Defendant Jefferson was discussing with a cooperating witness when Defendant Jefferson said Mr. Yahyah had “a lot of folks to pay off” in connection with the Nigerian Joint Venture. Ind. ¶ 96. The Indictment alleges, among other things, that on or about June 9, 2005, Mr. Yahyah asked Vernon Jackson whether Defendant Jefferson had spoken to Vice President Abubakar and then implored Vernon Jackson that it was time for Defendant Jefferson to speak with the vice president as they did not have an edge in the negotiation with NITEL. Ind. ¶ 105. Mr. Yahyah said to Vernon Jackson that Defendant Jefferson had to “move in and move in fast.” *Id.*

Both before and after the grand jury returned the Indictment in this case on June 4, 2007, which included the aforementioned allegations, these three prospective witnesses and their roles in the crimes charged were well known to Defendant Jefferson. Moreover, long before the Indictment

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<sup>4</sup> The Indictment further alleges that later, on or about July 21, 2005, Defendant Jefferson assured a cooperating witness that they had a deal with the vice president, explaining that the bribe to the vice president would consist of a “front-end” payment of \$500,000 to the vice president, which would ensure that the “little hook is in there,” and a “back-end” payment of at least half of Rosecom.Net’s share of the Nigerian Joint Venture’s profits. Ind. ¶ 125.

was returned in this case, Vice President Abubakar made public denials of any involvement in wrongdoing with Defendant Jefferson, which by logical extension also disclaimed improper conduct by his wife, Mrs. Abubakar.<sup>5</sup> Mr. Yahyah made similar public denials long before the Indictment was returned in this case.<sup>6</sup> In addition, between June 2007 and August 2007, the government produced to Defendant Jefferson in discovery documents received by the government from Vice President Abubakar, Mrs. Abubakar, and Mr. Yahyah through their respective attorneys. Besides providing these hundreds of documents to the defense, the government also produced materials received from the Nigerian government in response to the government's requests made pursuant to the Mutual Legal Assistance Treaty with Nigeria. Those documents included statements from

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<sup>5</sup> Within weeks of the \$90,000 cash being found in Defendant Jefferson's freezer, Vice President Abubakar offered an unsworn, self-serving general denial to improper conduct with Defendant Jefferson. *See, e.g., J. Lohor, FBI Raid: I've Done No Wrong Says VP, This Day* (Nigeria), Aug. 31, 2005, 2005 WLNR 13766307 (noting that Abubakar stated that "no wrong doing has been established against him"). Vice President Abubakar, who was hoping to become the next president of Nigerian, later offered more strenuous public denials. *See, e.g., Philip Shenon, Nigerian Official Denies Congressman Bribed Him*, N.Y. Times, July 20, 2006, at A19, 2006 WLNR 12467933; *Nigerian Vice President Denies Receiving Bribes*, Int'l Herald Tribune, July 21, 2006, 2006 WLNR 12578018. In addition to Vice President Abubakar issuing statements denying involvement, his attorney also made public denials on the vice president's behalf. *See, e.g., Rep. Jefferson Court Case Focuses on U.S. Separation of Powers*, U.S. Federal News Wire, May 24, 2007, 2007 WLNR 9818825 ("Abubakar's attorney denies he received any money from the congressman"); *Capital Watch*, Seattle Times, June 7, 2006, at A5 (citing the Associated Press and L.A. Times) ("A Washington lawyer for Abubakar on Tuesday denied wrongdoing by his client, who is running for president of Nigeria").

<sup>6</sup> Although not as widely reported, Suleiman Yahyah's public denials were printed in Defendant Jefferson's hometown newspaper and Nigerian newspapers available on commercial databases and the Internet. *See, e.g., Bruce Alpert and Bill Walsh, On the Hill*, N.O. Times-Picayune, Oct. 8, 2006, at 8, 2006 WLNR 17423573 ("Yahyah has denied paying or accepting bribes."); *This Day* (Nigeria), *The EFCC Report on Atiku*, Sept. 7, 2006, 2006 WLNR 15544774 (reprinting of EFCC report generated in response to government's MLA Treaty request in this case, in which Mr. Yahyah's statements are summarized including that "he is not aware of any issue of payment of 25% of his expected profit to anybody and that there was even no reason for the payment").

various witnesses interviewed by the Nigerian government, including a witness statement signed by Suleiman Yahyah, which the defense received on or about October 23, 2007.

In spite of (a) the well known public denials, (b) the production of document to the defense received by the government from all three prospective witnesses and the Nigerian government, and (c) the defense's access to these prospective witnesses' respective lawyers, in an abundance of caution the government sent a letter on February 7, 2008, reiterating this information, which was already known and readily accessible to the defense:

**Jennifer Douglas Abubakar:** During times relevant to the Indictment, Ms. Abubakar, who is a U.S. citizen, was one of the wives of the former Nigerian Vice President, Atiku Abubakar. On or about November 9, 2005, Ms. Abubakar entered into a *Kastigar* letter with the government providing Ms. Abubakar with limited use immunity, a copy of which is enclosed herewith. She later testified before a federal grand jury in this case. During her testimony, she confirmed and corroborated contact with your client in June and July of 2005, and she identified a number of materials your client provided to her. She denied that your client talked to her about his interest in paying her husband money. Ms. Abubakar's attorney invoked the marital privilege on behalf of Ms. Abubakar to prohibit questions about Ms. Abubakar's communications between her and her husband about these topics. Based on the evidence gathered to date, the government believes her denial of knowledge of a bribery scheme involving your client and her husband is a false exculpatory statement. A search of the NCIC database ended with negative results.

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In addition to the witnesses mentioned above, former **Vice President Atiku Abubakar** and **Suleiman Yahyah** are both referenced in the Indictment. The government is aware, as is the defense, that Messrs. Abubakar and Yahyah have made statements either through their lawyers, to the media, or to Nigerian authorities denying any role in paying or accepting bribes in relation to the charges pending in the above-captioned case. The government believes these self-serving, unsworn exculpatory statements to be false.

(Feb. 7, 2008 Letter from M. Lytle to R. Trout at 3, 5 (“Feb. 7th Letter”)) (emphasis in original).) The statements relating to Vice President Abubakar and Mr. Yahyah, in particular, were stated broadly because the statements referred to were not made to the government, but rather, were contained in various newspapers or made to third parties, and thus, they were hearsay, potentially many times removed. Two months later -- and just two days before Defendant Jefferson’s brief to the Fourth Circuit was to be submitted -- Defendant Jefferson filed the instant motion.<sup>7</sup>

### **ARGUMENT**

Defendant Jefferson asks this Court to order the depositions of Vice President Atiku Abubakar, Jennifer Douglas Abubakar, and Suleiman Yahyah. He does so without providing any evidence as to their unavailability. Moreover, he makes this motion without discussing what these prospective witnesses’ specific forecasted testimony would be other than to say they will deny wrongdoing -- something Defendant Jefferson has known for a very long time. In fact, these broad denials of wrongdoing do not appear to be anything beyond the statements that Defendant Jefferson could himself make from the witness stand. Finally, Defendant Jefferson concedes that even if this Court permitted such depositions of Vice President Abubakar and Mr. Yahyah, they would have to be compelled to testify because neither is willing to provide such testimony voluntarily. Consequently, Defendant Jefferson asks this Court to compel the government to use an international treaty contrary to its own terms, or in the alternative, employ a “complicated, dilatory, and

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<sup>7</sup> As such, the timing of Defendant Jefferson’s instant motion and his motion to reconsider the Court’s denial of his transfer of venue motion, (DE# 183), appears aimed more at distracting the government from preparing its expedited response due in ten days to the Fourth Circuit than toward urgently seeking the testimony of witnesses long-since known to the defense.

expensive” process, which is unlikely to result in procuring reliable evidence. For the reasons set forth below, the Court should deny these requests.

# **I. The Court Should Deny Defendant Jefferson’s Motion for Rule 15 Depositions**

Defendant Jefferson bears a heavy burden in seeking foreign depositions -- a burden he has not met. The taking of depositions in criminal cases -- unlike civil cases -- is generally disfavored. *United States v. Drogoul*, 1 F.3d 1546, 1551 (11th Cir. 1993); *United States v. Rosen*, 240 F.R.D. 204, 208 (E.D. Va. 2007) (*Rosen VI*). “In particular, because of the absence of procedural protections afforded parties in the United States, foreign depositions are suspect and, consequently, not favored.” *Drogoul*, 1 F.3d at 1551; *see also United States v. Mueller*, 74 F.3d 1152, 1156 (11th Cir. 1996) (depositions in foreign countries are particularly disfavored); *United States v. Alvarez*, 837 F.2d 1024, 1029 (11th Cir. 1988) (“Foreign deposition testimony, because of the absence of a sanction for perjury, is suspect.”); *cf. United States v. Milian-Rodriguez*, 828 F.2d 679, 686 (11th Cir. 1987) (depositions disfavored because fact finder cannot observe witness’s demeanor in courtroom). These concerns are particularly true here where the prospective defense witnesses have been to the United States many times before, yet now do not want to testify under oath before this Court and subject to this country’s sanctions for perjury and obstruction of justice. Indeed, such concerns are further heightened in the case of the Abubakars, who traveled here regularly and even own a mansion a short drive from the courthouse at which the trial will occur.

Rule 15(a) of the Federal Rules of Criminal Procedure only permits depositions in a criminal matter “because of exceptional circumstances and in the interest of justice” for the purpose of “preserv[ing] testimony for trial.” The moving party bears the burden of showing the existence of exceptional circumstances that would justify the issuance of an order for Rule 15 depositions.



*Drogoul*, 1 F.3d at 1552. Whether to issue such an order is a matter for the court's discretion. *Id.*; *see also United States v. Thomas*, 62 F.3d 1332, 1340 (11th Cir. 1995).

Three factors are considered in assessing whether the circumstances are so exceptional as to warrant the taking of depositions: "if it appears that (a) the prospective witness will be unable to attend or be prevented from attending trial, (b) the prospective witness' testimony is material, and (c) the prospective witness' testimony is necessary to prevent a failure of justice." *Rosen VI*, 240 F.R.D. at 208; *see Thomas*, 62 F.3d at 1340-41. Of the factors to be weighed in determining a Rule 15 motion, "[t]he principal consideration guiding whether the absence of a particular witness's testimony would produce injustice is the materiality of that testimony to the case." *Drogoul*, 1 F.3d at 1552; *see United States v. Ismaili*, 828 F.2d 153, 159 (3d Cir. 1987). In each instance, Defendant Jefferson's motion fails to pass muster.

**A. Defendant Jefferson Has Offered No Evidence Regarding the Unavailability of Any of His Prospective Witnesses**

A moving party may demonstrate the probable unavailability of a prospective deponent "through affidavits or otherwise." *Drogoul*, 1 F.3d at 1553; *Alvarez*, 837 F.2d at 1029. In a recent case in this District, a court denied a motion seeking Rule 15 depositions for, among other things, failing "to provide any affidavits or evidentiary support with respect to his claims" of the unavailability of the prospective witnesses. *United States v. Guild*, No. 1:07cr404 (JCC), 2008 WL 134562, at \*3 (E.D. Va. Jan. 9, 2008) (unpublished). The *Guild* court found that the defendant had not "persuasively demonstrated that any of these witnesses are actually unavailable" as the defendant had not included any "affidavits, court testimony, or even statements from potential deponents delineating their inability to testify at trial." *Id.* The same situation exists here.

In the instant case, Defendant Jefferson has produced no evidence to demonstrate the unavailability as to any of the prospective witnesses he seeks to depose. With regard to Vice President Abubakar and Mr. Yahyah, Defendant Jefferson merely asserts in a conclusory fashion that “Mr. Abubakar and Mr. Yahyah are outside of the United States, are not willing to appear voluntarily at trial, and are not subject to trial subpoenas that could be served by the defendant.” (Mot. at 5.) But even these three bare assertions are not supported by even a letter from these prospective witnesses’ attorneys, much less an affidavit or some other form of evidence. This simply does not meet the minimal requirements of Rule 15 in this regard. This defect is highlighted by the fact that, for example, far from being generally unavailable in the United States, Vice President Abubakar has traveled to the United States within the past year and has a mansion with his wife in Potomac, Maryland. This deficiency is further underscored by Defendant Jefferson’s conclusory assertions that Mrs. Abubakar is unavailable, which ignores a statutory mechanism by which she could be compelled to testify at the trial of this matter.

In seeking a Rule 15 deposition of Mrs. Abubakar, Defendant Jefferson asserts that because “Mrs. Abubakar . . . [is] outside of the United States, [is] not willing to appear voluntarily at trial, and [is] not subject to trial subpoenas that could be served by the defendant,” Mrs. Abubakar is “unavailable for purposes of the Rule 15 analysis.” (Mot. at 5.) Defendant Jefferson informs the Court and the government that Mrs. Abubakar is not willing to travel to the United States for trial “because the lengthy trip would keep her away from her children and her teaching activities,” but that she is willing to travel to an as-yet-undisclosed location in Europe to provide testimony on

behalf of Defendant Jefferson.<sup>8</sup> (Mot. at 3.) Putting aside the fact that Defendant Jefferson's aforementioned assertions are not supported by an affidavit or a scintilla of other evidence, these statements, even if taken as true, cannot justify the extraordinary measure of a Rule 15 deposition -- in Nigeria, in Europe, or any other locale that may be preferred by Mrs. Abubakar. That is because she can be compelled by subpoena to appear at the trial of this case *in the United States* and provide in-person testimony before this Court.<sup>9</sup>

Mrs. Abubakar, who Defendant Jefferson admits is a United States citizen (Mot. at 3), can be subjected to compulsory process to secure her testimony at the trial of this matter pursuant to Rule 17(e)(2) of the Federal Rules of Criminal Procedure and Title 28, United States Code, Section 1783, if this Court finds that the requirements of Section 1783 are met. This section applies to witnesses subpoenaed to give testimony before a grand jury as well as testimony at trial. *See Blackmer v. United States*, 284 U.S. 421, 442-43 (1932); *United States v. Danenza*, 528 F.2d 390, 392 (2d Cir. 1975); *United States v. Lansky*, 496 F.2d 1063, 1067-68 (5th Cir. 1974). Without presuming whether the Court would find that a Section 1783 order is merited in this case, using this statutory mechanism to obtain live, in-court testimony is the proper course that Defendant Jefferson and his

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<sup>8</sup> It is curious that, according to Defendant Jefferson, Mrs. Abubakar is willing voluntarily to take a flight from Nigeria to Paris or London, for example, but is not willing to voluntarily take one additional flight from Paris or London to Washington, D.C. This is particularly true when Mrs. Abubakar lived in the Washington, D.C. area for many years and continues to own a multi-million dollar mansion only a short drive from the courthouse in which the trial of this matter will occur.

<sup>9</sup> This, of course, does not resolve the issue of her Fifth Amendment right to refuse to testify if her truthful testimony would tend to incriminate her. U.S. Const. amend V (no person "shall be compelled in any criminal case to be a witness against himself"); *see Hoffman v. United States*, 341 U.S. 479, 486 (1951) (Fifth Amendment privilege "not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime.").

counsel should pursue. In fact, the *Drogoul* case, on which Defendant Jefferson relies heavily in his motion, emphasized that Rule 15 was appropriate “[b]ecause the witnesses are *foreign nationals*,” citing to Title 28, United States Code, Section 1783, and thus concluding that “they are beyond the subpoena power of the district court.” 1 F.3d at 1553. That is not true here with regard to Mrs. Abubakar, who is a naturalized U.S. citizen. Indeed, at least one court in the Fourth Circuit has suggested that seeking a deposition under Rule 15 when the movant could seek a prospective witness’ testimony via Section 1783 is sanctionable conduct. *See United States v. Stroop*, 121 F.R.D. 269, 271 n.2 (E.D.N.C. 1988) (warning that if witnesses sought to be deposed by defendants were subject to Fed. R. Crim. P., Rule 17(e)(2) and 28 U.S.C. § 1783 service of process, then defendants and their counsel were “subjecting themselves to the imposition of sanctions for the filing of unnecessary court proceedings devoid of factual support”).

Again, the government understands why these three unindicted co-conspirators -- who are no strangers to the United States -- do not want to testify before this Court in the United States. But Rule 15 still requires some measure of evidentiary support to establish their unavailability, and certainly with regard to Mrs. Abubakar, it requires some explanation as to why recourse to Section 1783 would not vitiate the basis for a Rule 15 deposition. The instant motion offers nothing in this regard. For this reason alone, the motion should be denied for failing to establish the unavailability of these prospective witnesses.

**B. Defendant Jefferson Has Not Established that the Prospective Testimony Will Be Material and Not Merely Cumulative and Corroborative**

Besides having to establish the unavailability of a prospective witness, a moving party must also demonstrate that the prospective witness’ testimony is material. *Rosen VI*, 240 F.R.D. at 208.

When Rule 15 depositions are sought by a defendant, “materiality” has the same meaning as the Supreme Court gave the term in *Brady v. Maryland*, 373 U.S. 83 (1963). *Rosen VI*, 240 F.R.D. at 208; see *United States v. Hajbeh*, 284 F. Supp. 2d 380, 383-85 (E.D. Va. 2003); cf. *Drogoul*, 1 F.3d at 1552; Charles Alan Wright, *et al.*, 2 *Fed. Prac. & Proc. Crim.* § 242 (3d ed. 2006). As this Court ruled in *Rosen VI*, it follows then that a materiality analysis requires examination of the forecasted testimony of the prospective witnesses to ascertain:

- (i) whether it is exculpatory, *i.e.*, tends to negate an element of the crime or to establish a defense, and
- (ii) whether it is cumulative of other evidence.

*Rosen VI*, 240 F.R.D. at 209. This analysis involves a three-step process in which the elements of the crime are identified, the outline of the anticipated testimony is determined, and then the elements and the forecasted testimony are compared to ascertain whether the proffered testimony negates any element of the charged crime or establishes a defense. *Id.*

This Court’s analysis in *Hajbeh* is instructive here. In *Hajbeh*, the defendant was charged with unlawful possession of an alien registration card procured by fraud in violation of 18 U.S.C. § 1546(a). 284 F. Supp. 2d at 380-81. The fraud consisted of a false statement on the application for the card, wherein the defendant indicated that he was single, never married, and had no children. *Id.* Proof of the defendant’s knowledge of the false statement was an element of the charged offense. *Id.* at 382, 382 n.4. The defendant sought to conduct a Rule 15 deposition of his brother-in-law, Hasan S. Hajibi. The defendant proffered that Hajibi would testify that Hajibi assisted the defendant in filling out the application due to defendant’s lack of proficiency in English and that Hajibi filled out the form relying chiefly on another form, which the defendant’s mother had filled out earlier that

indicated that the defendant was unmarried and had no children. *Id.* This proffered testimony, the defendant argued, would show that the defendant did not know the form contained false information when he signed and submitted it. *Id.*

In rejecting the Rule 15 deposition request, this Court defined “material” in this context as evidence that is “exculpatory” and “not merely corroborative or cumulative of other evidence.” *Id.* at 384-85 (citing cases). The Court accepted for purposes of argument that Hajibi would testify as proffered. The Court then analyzed the testimony for materiality as to whether it negated any element of the offense. The Court held that the evidence was “plainly exculpatory for defendant as it serve[d] to negate the requisite knowledge element of the offense.” *Id.* at 385. However, the Court held that the evidence was also, “at best, cumulative and merely corroborative of testimony that the defendant himself is able to offer and hence not material.” *Id.* Consequently, the evidence was not material and the deposition was not authorized. *Id.* The fact that this may “encourage” the defendant to testify did not alter the analysis. *Id.* at 386. Finally, the Court held that “[t]he absence of materiality ends the analysis as it precludes the application of Rule 15(a).” *Id.*

Here, the three-step analysis outlined in *Rosen VI* and *Hajbeh* reveals that the instant motion has not established the materiality of the forecasted testimony of these witnesses either. These three witnesses are unindicted co-conspirators in the three-object conspiracy of Count 1, in violation of Title 18, United States Code, Section 371. The objects of the conspiracy in Count 1 are (a) to solicit bribes by a public official, (b) to deprive citizens of honest services by wire fraud, and (c) to violate the Foreign Corrupt Practices Act. *Ind.* ¶ 40. Section 371 provides, in part, that:

If two or more persons conspire . . . to commit any offense against the United States, or to defraud the United States, or any agency thereof . . . and one or more of such persons do any act to effect the object of

the conspiracy, . . . an offense against the United States has been committed.

It appears that the defense and the government agree that for Defendant Jefferson to be found guilty of Count 1, the government must prove the following elements beyond a reasonable doubt:

- First:* that two or more persons conspired, or agreed, to commit the crimes identified in the particular count;
- Second:* that the defendant knowingly and intentionally joined the conspiracy; and
- Third:* that a member of the conspiracy did one of the overt acts described in the Indictment for the purpose of advancing, furthering or helping the object or purpose of the conspiracy.

See Sixth Circuit Pattern Criminal Jury Instructions, No. 3.01A (2005) (modified); 2 O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions*, § 31.03 (5th ed. 2000); *United States v. Anderson*, 611 F.2d 504, 510 (4th Cir. 1979); *see also* Mot. at 6. This, however, is where any agreement between the government and the defense ends.

Contrary to Defendant Jefferson's motion, the second part of the three-part analysis, that is, determining the outline of the forecasted testimony, cannot even be conducted as the motion has not provided any type of outline or specifics of the testimony that these prospective witnesses would supposedly provide in a deposition. (Mot. at 7.) Rather, the motion merely repeats the denials of wrongdoing by Vice President Abubakar, Mrs. Abubakar, and Mr. Yahyah referenced in the government's February 7th letter without providing any specifics with regard to the events, conversations, agreements, or actions about which they would testify. (*Id.*) In fact, only six sentences are devoted to the entire forecasted testimony of all three witnesses combined. (*Id.*) This is because Defendant Jefferson actually has no idea, beyond general denials of wrongdoing, what

these witnesses would say at a deposition -- or if he does, he has not provided such an outline to this Court or the government. *See Guild*, 2008 WL 134562 at \*2 (denying motion for Rule 15 depositions, in part, because defendant provided only scant detail about prospective testimony).

In fact, as the government mentioned in its February 7th letter, many of the statements made by Mrs. Abubakar are, in fact, inculpatory and consistent with the government's theory of prosecution in that "she confirmed and corroborated contact with [Defendant Jefferson] in June and July of 2005, and she identified a number of materials [Defendant Jefferson] provided to her." Feb. 7th Letter at 3. Moreover, in his motion Defendant Jefferson does not mention that, as the government made clear in its February 7th letter, inquiry into Mrs. Abubakar's conversations with Vice President Abubakar was curtailed by an assertion of the marital privilege. Thus, it is not clear what, if anything, Mrs. Abubakar might say about those conversations that would be inculpatory as to Defendant Jefferson if that privilege were overcome by the government. It is also not clear whether Vice President Abubakar's statements made to the press reflect a correct understanding of the concept of conspiracy applicable in federal courts in the United States. In other words, the hearsay statements by Vice President Abubakar captured in the press, for example, where he denies that he "accepted" a bribe, may simply be using that word to mean he never took actual physical possession of the cash. If so, this is not inconsistent with the government's theory of prosecution and is, therefore, not necessarily exculpatory as to Defendant Jefferson.<sup>10</sup> Similarly, the statement

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<sup>10</sup> Incidentally, Defendant Jefferson states that the government concedes that the statements by Vice President Abubakar, Mrs. Abubakar, and Mr. Yahyah are exculpatory as to Defendant Jefferson. (*See Mot.* at 2, 5.) The government did not state that these statements were necessarily exculpatory as to Defendant Jefferson, but, rather, asserted that the government believes that these statements were false, self-serving statements made by these witnesses seeking to exculpate themselves.



by Mr. Yahyah attached to the proposed request for international judicial assistance corroborates much of the government's case and does not explicitly deny agreements to pay bribes to local officials. (*See* Mot., Ex. 1 at 10-18.) Again, general denials of wrongdoing cited by Defendant Jefferson -- without specific facts to support them and provide context -- is of little use in determining the putative exculpatory character of the forecasted testimony. For example, it could very well be that some or all of these prospective witnesses believe that "bribes" may be technically illegal, yet do not think that anything is wrong with paying "commissions," "bonuses," or shares of stock to a public official to influence a decision. Thus, a general denial of wrongdoing, void of specific facts, is insufficient to set forth the forecasted testimony such that this Court can reasonably determine if the forecasted testimony would actually negate elements of the offenses charged.

But even assuming the outlines of the forecasted testimony were adequate and that all three of these witnesses would affirmatively deny conspiring with Defendant Jefferson to commit any of the three offenses delineated in Count 1, such testimony would be merely cumulative and corroborative of testimony that Defendant Jefferson could himself offer from the witness stand. In *Hajbeh*, this Court found that even proffering plainly exculpatory testimony did not justify Rule 15 depositions where that testimony was "also, at best, cumulative and merely corroborative of testimony that defendant himself is able to offer and hence not material." 284 F. Supp. 2d at 385. The same is true here. Defendant Jefferson can testify that during his meetings and conversations with Vice President Abubakar, Mrs. Abubakar, and Mr. Yahyah he did not conspire with them to commit any of the offenses in Count 1. Consequently, at best, these witnesses would merely rehash those denials, and their testimony would be offered by Defendant Jefferson simply to corroborate his statements. In short, the potential testimony by these witnesses would be "merely cumulative

and corroborative and therefore, not material.” *Id.*; see also *Rosen VI*, 240 F.R.D. at 213. As the Court noted in *Hajbeh*, this analysis does not run afoul of Defendant Jefferson’s Fifth Amendment rights as “an incentive to testify does not amount to compulsion.” 284 F. Supp. 2d at 386.

Lastly, given that Defendant Jefferson has failed to pass muster under the first two prongs of the three-factor Rule 15 test, that is, unavailability and materiality, it follows that the prospective witness’ testimony is not necessary to prevent a failure of justice. This is particularly true here where the two prospective witnesses for which Section 1783 does not apply, Vice President Abubakar and Mr. Yahyah, are unwilling to voluntarily provide testimony, and as described in detail below, the extraordinary efforts sought by Defendant Jefferson to compel such testimony are fraught with problems and will undoubtedly cause substantial delay. For all of these aforementioned reasons, the Court should deny this motion.

## **II. The Court Should Also Reject Defendant Jefferson’s Efforts to Compel Depositions Through the Improper Use of an International Treaty or the Letters Rogatory Process**

In his motion, Defendant Jefferson concedes that even if this Court were to issue an order permitting such depositions to take place, Vice President Abubakar is “unwilling to appear voluntarily in the United States for trial.” (Mot. at 4.) Defendant Jefferson similarly presumes that Mr. Yahyah will need to be compelled to testify as Mr. Yahyah’s counsel has purportedly informed defense counsel that “Mr. Yahyah is in Nigeria and unavailable to speak to the defense.” (*Id.*) Accordingly, besides requesting Rule 15 depositions, which this Court should deny, Defendant Jefferson also asks this Court to compel the testimony of these prospective witnesses through the MLA Treaty with Nigeria or through issuing a request for international judicial assistance. (*Id.* at 9-11.) Both means should be rejected by this Court for the reasons set forth below.

**A. Defendant Jefferson’s Proposal to Improperly Compel the Use of the Mutual Legal Assistance Treaty with Nigeria Should Be Rejected**

Defendant Jefferson has asked that this Court “requir[e] the government to obtain the depositions pursuant to the Mutual Legal Assistance (‘MLA’) treaty with Nigeria.” (*Id.* at 9.) But this request, Defendant Jefferson admits, is contrary to the terms of the MLA Treaty and this Court’s own analysis in *Rosen VI*. (*Id.* at 9-10.) Again, the government understands why these two unindicted co-conspirators will fight any attempt to take their testimony, but the defense cannot improperly utilize this international treaty to force such testimony. For the reasons set forth below, the Court should reject this request as improper and contrary to the very terms of the treaty itself.

The MLA Treaty referred to by Defendant is a bilateral treaty between the United States and Nigeria designed to be “an effective tool to assist in the prosecution of a wide variety of modern criminals, including members of drug cartels, ‘white collar criminals,’ and terrorists.” Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Nigeria, Sept. 13, 1989, Treaty Doc. 102-26 (hereinafter “U.S.-Nigeria MLA Treaty”); Transmittal Let. from President George H.W. Bush to the U.S. Senate, April 1, 1992. In particular, the U.S.-Nigeria MLA Treaty limits the scope of assistance to the “Contracting Parties,” which are defined as the “Government of the United States of America and the Government of the Federal Republic of Nigeria.” U.S.-Nigeria MLA Treaty, preface. Furthermore, the U.S.-Nigeria MLA Treaty explicitly provides no rights for private citizens:

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private party to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

*Id.* at art. I, para 4.

In *Rosen VI*, this Court was faced with an almost identical situation, and it rejected the defendants' request to compel the government to use a similar mutual legal assistance treaty with Israel to force deposition testimony of certain persons who worked for the Government of Israel. 240 F.R.D. at 213-15. In rejecting the defendant's request, this Court found that "[b]y its plain terms, it is clear that while the United States government (*i.e.*, Executive Branch) could use the MLA Treaty process to secure the testimony of the recalcitrant [prospective] witnesses, defendants, as private parties, are not entitled to utilize this procedure." *Id.* at 213. This Court in *Rosen VI* also rejected the defendants' claim that there was precedent for requiring the government to make the request on behalf of the defendants. *Id.* This Court found that even if the precedent relied upon by the defendants had been correctly decided, which this Court found to be a "generous assumption," such a conclusion was unsupported by the language of the treaty at issue in *Rosen VI*. *Id.* In reaching this decision, this Court noted:

[C]ourts interpreting MLA Treaties with clauses identical to Art. 1 ¶ 4 in the U.S.-Israel MLA Treaty have uniformly held that the MLA Treaty creates no rights in individual defendants to force the government to request evidence under the MLA Treaty procedures or to complain of any violation of the Treaty.

*Id.* at 214, 214 n.24 (collecting cases). This Court also rejected a claim by the *Rosen VI* defendants that the mutual legal assistance treaty between the United States and Israel denied them their Sixth Amendment right to compulsory process. *Id.* at 214-15. This Court found that, regardless of whether the forecasted testimony was material, "it is quite clear that the right to compulsory process extends only to forms of process a court can issue of its own power, not to forms of process that require cooperation of the Executive Branch or foreign courts." *Id.* at 214.

The same analysis and same result are appropriate here as the language in the U.S.-Israel and U.S.-Nigeria treaties are virtually identical.<sup>11</sup> Accordingly, just as in the *Rosen VI* case, the plain language of the U.S.-Nigeria MLA Treaty explicitly limits the use of the treaty to the United States government (*i.e.*, Executive Branch), and thus, Defendant Jefferson, as a private party, is not entitled to utilize this procedure. *See id.* at 213-14. As the Court noted in the *Rosen VI* decision, this result is not novel: every court to consider mutual legal assistance treaties with similar provisions has reached the same conclusion. *Id.* at 214 n.24. Similarly, just like in *Rosen VI*, Defendant Jefferson's Sixth Amendment rights are not violated when the government declines to exercise a treaty power to compel the testimony of a non-American in another country. *See id.* at 214-15. Again, this result is not novel: no court has held otherwise. *Id.* at 215. For these reasons, the Court should deny this request.

**B. Defendant Jefferson's Request for the Issuance of Letters Rogatory Should Also Be Denied**

Knowing that his request to compel the government to use the MLA Treaty was improper, Defendant Jefferson at the same time alternatively requested that the Court issue letters rogatory regarding Vice President Abubakar and Mr. Yahyah.<sup>12</sup> This request should be denied because the

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<sup>11</sup> Compare U.S.-Nigeria MLA Treaty at art. I, para 4., with Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Isr., Jan. 26, 1998, Treaty Doc. 105-40, at art. I, para 4. ("This Treaty is intended solely for mutual assistance between the Parties. The provisions of this Treaty shall not give rise to any right, that does not otherwise exist, on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.").

<sup>12</sup> Because the government does not believe that Defendant Jefferson has met his burden under Rule 15 or properly justified the issuance of letters rogatory, the government has not herein addressed problems with Defendant Jefferson's suggested protocol and questions contained in his proposed letters rogatory request. If this Court finds that Defendant Jefferson has met his burden under Rule 15 and determines that, in its discretion, letters rogatory should be issued, the government can address the one-sided proposed questions to be put to Vice President Abubakar and Mr. Yahyah.

forecasted testimony, for reasons discussed above, has not been established as material; the request is likely to involve substantial litigation and cause great delay; it is highly unlikely to be successful; even if it does result in any testimony, such “evidence” is almost certain to lack any indicia of reliability or trustworthiness; and the request itself is untimely. For these reasons, the Court should exercise its discretion in declining to issue such letters rogatory.

Federal courts have both statutory and inherent authority to issue letters rogatory, including in criminal cases. *Rosen VI*, 240 F.R.D. at 215; *see* 28 U.S.C. § 1781. Whether to issue letters rogatory is committed to the sound discretion of the trial court. *Rosen VI*, 240 F.R.D. at 215 (citing cases). As this Court observed in *Rosen VI*, “[i]n general, ‘where the relevancy or materiality of the testimony sought is doubtful, the court should not grant the application’ for letters rogatory.” *Id.* (citing 26B C.J.S. Depositions § 34). Rather, issuance of letters rogatory should only occur where “necessary and convenient.” *Id.* (citing 35A C.J.S. Federal Civil Procedure § 614).

Just as in the *Rosen VI* case, there are several factors that counsel against issuing such letters rogatory in this matter. *First*, as explained above, the general denial testimony of Vice President Abubakar and Mr. Yahyah, which Defendant Jefferson seeks to compel through a request for international judicial assistance, is merely cumulative and corroborative of much more specific testimony that Defendant Jefferson could himself give from the witness stand.

*Second*, as this Court noted in *Rosen VI*, “delay attends the letters rogatory process and counsels against issuance.” *Id.* In fact, the Supreme Court has described the procedure as often “complicated, dilatory, and expensive.” *See Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court*, 482 U.S. 522, 531 (1987) (“Letters of request for judicial assistance from courts abroad in securing needed evidence have been the exception, rather than the rule.”). Compounding the

difficulties typically associated with the letters rogatory procedure is the current state of the Nigerian system of government, particularly the judicial system through which Defendant Jefferson proposes to procure this testimony. According to the State Department's most recent *Country Reports on Human Rights Practices – 2007* on Nigeria issued on March 11, 2008, much of the Nigerian judiciary is susceptible to political influence, vast inefficiencies, and widespread bribery:

Although the constitution and law provide for an independent judiciary, the judicial branch remained susceptible to executive and legislative branch pressure. Political leaders influenced the judiciary, particularly at the state and local levels. Understaffing, underfunding, inefficiency, and corruption continued to prevent the judiciary from functioning adequately. There was a widespread perception that judges were easily bribed and that litigants could not rely on the courts to render impartial judgments. Citizens encountered long delays and frequent requests from judicial officials for bribes to expedite cases or obtain a favorable ruling. Judges frequently failed to appear for trials, often because they were pursuing other sources of income, and sometimes because of threats against them. In addition court officials often lacked the proper equipment, training, and motivation to perform their duties, with lack of motivation primarily due to inadequate compensation.

Dept. of State, *Country Rep. on Human Rights Practices – 2007* (“*Country Rep.*”) at 7 (Mar. 11, 2008), Ex. 4. These systemic problems are not limited to the judiciary: “Corruption was massive, widespread, and pervasive, at all levels of the government and society.” *Id.* at 16. It is this system through which Defendant Jefferson proposes that Mr. Yahyah, a wealthy businessman, and Vice President Abubakar, the former vice president of the country, who still holds great influence and power and who has amassed great wealth through suspicious means, be questioned by some as-yet-unidentified judicial body. Given the status of these men and the current state of the judicial system in Nigeria, there is a significant likelihood that this quest will take a very long time and has only a

slight chance of success.<sup>13</sup> See Rule 15, Fed. R. Crim. P., Advisory Comm. Note, 1974 (“An obviously important factor is whether a deposition will expedite, rather than delay, the administration of criminal justice.”).

*Third*, even if the letters rogatory procedure requested by Defendant Jefferson resulted in questions ultimately being put to Vice President Abubakar and Mr. Yahyah, there is no guarantee that either of them would provide any answers.<sup>14</sup> The constitution in Nigeria guarantees an individual the right to remain silent:

Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

Const. of the Fed. Rep. of Nigeria of 1999 (“Nigeria Const.”), ch. IV (Fundamental Rights), sec. 35(2). This right appears to be a qualified right to remain silent, that is, one may remain silent after consultation with counsel but such silence can be used against the person in a prosecution. Given that the government has identified both Vice President Abubakar and Mr. Yahyah as unindicted co-conspirators in its case, it seems that both men could avail themselves of Section 35(2) of the Nigerian Constitution to refuse to answer many, if not all, of Defendant Jefferson’s proposed

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<sup>13</sup> If Vice President Abubakar’s recent track record of skipping a hearing before a committee of the House of Representatives in Nigeria is any foreshadowing of things to come, the likelihood of forcing him to attend a deposition convened per a request for international judicial assistance is remote. See, e.g., Vanguard (Nigeria), *Power Probe – Obasanjo, Atiku Fail to Show Up*, May 13, 2008, 2008 WLNR 9006364.

<sup>14</sup> Further complicating this process is the fact that the Nigerian constitution “provides immunity from civil and criminal prosecution to the president, vice president, governors, and deputy governors.” *Country Rep.* at 16; Nigerian Const., ch. VIII, part II, sec. 308. This immunity also prohibits the service of process compelling the appearance the aforementioned persons. Nigerian Const., ch. VIII, part II, sec. 308(1)(c). While this immunity appears to be limited to the period of time while the person is in office, the application of such time-period limitations could certainly be subject to lengthy litigation.



questions. This is particularly true here where there is little downside to remaining silent since there is no criminal case against them for this conduct in Nigeria in which their silence would be able to be used against them. At the very least, this is an issue that could result in substantial litigation and further delay.

*Fourth*, even in the unlikely event that any testimony would be secured through this process, there is little hope that it would be testimony that is trustworthy and upon which the Court or the jury could or should properly rely. The proposed request for international judicial assistance to an unnamed Nigerian judicial body will leave this Court with essentially no control over the manner and means in which the testimony of Vice President Abubakar and Mr. Yahyah will be procured. *See Société Nationale*, 482 U.S. at 532 (“[T]he absence of agreed standards applicable to letters of request have frequently caused difficulties for courts and litigants.”). In short, there will be no guarantee that this evidence will have an indicia of reliability and no certainty that it will merit admission at the trial of this case. Not to mention, this Court will also have no ability to sanction either witness for any improper conduct.

*Fifth*, this request for such extraordinary relief is untimely. Although the Court’s February 6, 2008 Order denying Defendant Jefferson’s motion to dismiss most of the Indictment is on interlocutory appeal to the Fourth Circuit, the Fourth Circuit has agreed -- over Defendant Jefferson’s objection -- to consider the matter on an expedited basis. The government is hopeful that the Court will be affirmed and the case will be remanded for a trial in the near term. In spite of this, Defendant Jefferson just filed this request for Rule 15 depositions and international judicial assistance -- nearly a year after the Indictment in this case was returned. Yet Defendant Jefferson has known about these witnesses and their involvement in this matter for *more than three years*. Not only was he personally

involved with both of the men whose testimony he now seeks to compel through letters rogatory, Vice President Abubakar and Mr. Yahyah's involvement was made clear in the Indictment itself. As mentioned above, there can also be little doubt that Defendant Jefferson and his team of lawyers and investigators have known of Vice President Abubakar and Mr. Yahyah's public denials of wrongdoing some of which predate the return of the Indictment by as much as 2 ½ years. In short, Defendant Jefferson has long been aware of these witnesses and their self-serving denials of wrongdoing. But rather than seek these depositions and the issuance of letters rogatory in June 2007, Defendant Jefferson is just now getting around to this request.

Defendant Jefferson suggests to this Court that it was the government's February 7th letter, which merely re-stated these general denials, that galvanized Defendant Jefferson to now seek this testimony. (Mot. at 2 ("In a letter dated February 7, 2008, the government disclosed for the first time that 'Messrs. Abubakar and Yahyah have made statements . . . denying any role in paying or accepting bribes. . . .") Defendant Jefferson, however, was careful to avoid mentioning how long the defense team has been aware of this widely-available public information. Defendant Jefferson even goes so far as to claim that these disclosures "fall far short of satisfying the government's obligations under *Brady v. Maryland*, 373 U.S. 83 (1963)" to suggest some improper conduct by the government. (Mot. at 2.) Such claims appear geared toward avoiding the untimeliness of the instant motion and request for international judicial assistance, but they reflect a fundamental misunderstanding of *Brady* and its progeny.<sup>15</sup> As such, any suggestion by Defendant Jefferson that

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<sup>15</sup> To prove a *Brady* violation, a defendant must show that non-disclosed evidence was (1) favorable to the defendant; (2) material; and (3) that the prosecution *possessed the materials and failed to disclose them*. *Moore v. Illinois*, 408 U.S. 786, 794-95 (1972); *United States v. Stokes*, 261 F.3d 496, 502 (4th Cir. 2001). That said, a defendant is not entitled under *Brady* to such information that he or his attorney knows or that is available to him from outside sources or through

he only recently learned of the importance of Vice President Abubakar or Mr. Yahyah from the government's February 7th letter is made merely to avoid the consequences of his own dilatory actions.

Accordingly, for all the aforementioned reasons, the Court should reject this request for international judicial assistance for failing to establish materiality of the forecasted testimony, for being unlikely to be successful, much less procure trustworthy testimony, and for being both untimely and likely to cause great delay.

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the exercise of reasonable diligence. *United States v. Wilson*, 901 F.2d 378, 380-81 (4th Cir. 1990); *United States v. Bros. Constr. Co.*, 219 F.3d 300, 316 (4th Cir. 2000). In this case, the entire statement of Mr. Yahyah, which was received by the government through the MLA Treaty process, was produced to defense counsel 6 ½ months ago, a summary of which was widely available since September 2006. Documents received from Vice President Abubakar, Mrs. Abubakar, and Mr. Yahyah, through their respective attorneys, were produced last summer. As for the statements by Vice President Abubakar and Mr. Yahyah captured in newspapers, those stories were publicly available to the defense and were obtained by the government by using the same commercial databases and Internet search vehicles available to defense counsel. As such, the government had no obligation to even apprise the defense of these latter statements, yet it still made the disclosures in an abundance of caution. Rather than "falling far short" of its obligations, the government's disclosures exceeded its obligations.

**CONCLUSION**

WHEREFORE, the United States respectfully requests that the Court deny Defendant Jefferson's motion for Rule 15(a) depositions in a foreign country or countries. The Court should similarly deny both of Defendant Jefferson's requests that the government be compelled to use a treaty in a manner inconsistent with its own terms and that, in the alternative, that the Court request international judicial assistance from an unnamed judicial body in Nigeria.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of May, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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**REAL PROPERTY CONSOLIDATED TAX BILL**  
**LEVY YEAR 2007**  
**ANNUAL BILL**  
**TAX PERIOD 07/01/2007-06/30/2008**

ACCOUNT NUMBER	BILL NO.	PROPERTY ADDRESS	MORTGAGE	OCCUPANCY
02278403	27205601	9731 SORREL AVE	UNKNOWN	NOT A PRINCIPAL RESIDENCE
<b>PROPERTY DESCRIPTION</b>		<b>DOUGLAS, JENNIFER E</b>		
FALCONHURST		PO BOX 02067-881 SIOUX FALLS, SD 57186-0001		

LOT	21	TAX DESCRIPTION	ASSESSMENT	RATE	TAX/CHARGE
BLOCK	6	STATE PROPERTY TAX	2,268,590	.112*	2,540.82
DISTRICT	10	COUNTY PROPERTY TAX	2,268,590	.916*	20,780.28
SUB	066	SOLID WASTE CHARGE		198.42	198.42
CLASS	R042	WATER QUAL PROTECT CHG (RSFD)			25.23
REFUSE AREA	R17	WSSC CONNECTION FEE CHG			134.08
REFUSE UNIT	1	WSSC FRONT FOOT BENEFIT CHG			1,193.64
		<b>TOTAL</b>			<b>24,872.47</b>
		PRIOR PAYMENTS ****			24872.47
		INTEREST			
		<b>TOTAL AMOUNT</b>			<b>0</b>
		<b>Amount Due by 5/31/2008</b>			<b>0</b>

**GOVERNMENT  
EXHIBIT  
2**



**REAL PROPERTY CONSOLIDATED TAX BILL**  
**LEVY YEAR 2007**  
**ANNUAL BILL**  
**TAX PERIOD 07/01/2007-06/30/2008**

ACCOUNT NUMBER	BILL NO.	PROPERTY ADDRESS	MORTGAGE	OCCUPANCY
03458350	27308721	12555 ANSIN CIRCLE DR	UNKNOWN	PRINCIPAL RESIDENCE
<b>PROPERTY DESCRIPTION</b>		DOUGLAS-ABUBAKAR, JENNIFER		
WHEEL OF FORTUNE PLAT		12555 ANSIN CIRCLE DR POTOMAC, MD 20854-6912		

LOT	98	TAX DESCRIPTION	ASSESSMENT	RATE	TAX/CHARGE
BLOCK	H	STATE PROPERTY TAX	150,000	.112*	168.00
DISTRICT	04	COUNTY PROPERTY TAX	150,000	.916*	1,374.00
SUB	013	<b>TOTAL</b>			<b>1,542.00</b>
CLASS	R053	PRIOR PAYMENTS ****			1542
REFUSE AREA		INTEREST			
REFUSE UNIT		<b>TOTAL AMOUNT</b>			<b>0</b>
		<b>Amount Due by 5/31/2008</b>			<b>0</b>
<b>Semi-Annual Installments Information</b>					
			<b>Tax</b>	<b>Due Date</b>	
Sept 30 Installment			771.00	09/30/2007	
Dec 31 Installment			771.00	12/31/2007	

**GOVERNMENT  
EXHIBIT  
3**



## U.S. DEPARTMENT of STATE

### Nigeria

#### Country Reports on Human Rights Practices - 2007

Released by the Bureau of Democracy, Human Rights, and Labor

March 11, 2008

Nigeria is a federal republic composed of 36 states and a capital territory, with a population of approximately 140 million. In April Umaru Musa Yar'Adua of the ruling People's Democratic Party (PDP) was elected to a four-year term as president; the PDP won 70 percent of the seats in the national legislature and 75 percent of the state governorships. The election was marred by what international and domestic observers characterized as massive fraud and serious irregularities, including vote rigging and political violence. Election tribunals, which continued at year's end, contested the results at all levels, resulting in the nullification of nine local-level elections, six senatorial elections, and five gubernatorial elections. While civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted outside the law.

The government's human rights record remained poor, and government officials at all levels continued to commit serious abuses. The most significant human rights problems included the abridgement of citizens' right to change their government; politically motivated and extrajudicial killings by security forces; the use of excessive force, including torture, by security forces; vigilante killings; impunity for abuses by security forces; beatings of prisoners, detainees, and suspected criminals; harsh and life-threatening prison conditions; arbitrary arrest and prolonged pretrial detention; executive influence on the judiciary and judicial corruption; infringement on privacy rights; restrictions on freedom of speech, press, assembly, religion, and movement; domestic violence and discrimination against women; female genital mutilation (FGM); child abuse and child sexual exploitation; societal violence; ethnic, regional, and religious discrimination; and trafficking in persons for the purpose of prostitution and forced labor.

#### RESPECT FOR HUMAN RIGHTS

##### Section 1 Respect for the Integrity of the Person, Including Freedom From:

###### a. Arbitrary or Unlawful Deprivation of Life

There were politically motivated killings by the government or its agents. National police, army, and other security forces committed extrajudicial killings and used excessive force to apprehend criminals and to disperse protesters during the year.

Police and the armed forces were instructed to use lethal force against suspected criminals and suspected vandals near oil pipelines in the Niger Delta region. Multinational oil companies and domestic oil producing companies often hired private security forces and subsidized living expenses for police and soldiers from area units assigned to protect oil facilities in the volatile Niger Delta region.

Military, former military, and freelance security forces accounted for a portion of the violent crime committed during the year.

The Joint Task Force (JTF) conducted raids on militant groups in the Niger Delta region, resulting in numerous deaths and injuries (see section 1.g.).

Police officers were not held accountable for excessive or deadly force or for the deaths of persons in custody. Police generally operated with impunity in the apprehension, illegal detention, and sometimes execution of criminal suspects. Abuses against civilians by poorly trained, poorly equipped, poorly supervised, and underpaid police were common, and the police were rarely held accountable.

On November 14, the new Inspector General of Police (IGP) announced official statistics showing that 785 suspected "armed robbers" had died in encounters with police in the three months since his tenure began. IGP Michael Okiro reported that 62 officers had been killed during the same time frame while attempting to apprehend suspected armed robbers. The statistics also indicated that police killed at least 8,564 persons between 2000 and October 2007. As a result of these announcements, the nongovernmental organization (NGO) Human Rights Watch called for a public inquiry into the disproportionate use of lethal force.

**GOVERNMENT  
EXHIBIT**

4

The government did not open such an inquiry by year's end.

On July 21, police from the Federal Capital Territory (FCT) Command shot and killed Mallam Ibrahim, a respected Islamic cleric who was staying at the house of friend. According to eyewitnesses, four armed soldiers led by a civilian entered the house, followed by a team of police officers. When the police left, they claimed to have interrupted an armed robbery and to have loaded the corpse of one of the perpetrators in their vehicle.

There were no developments in the January 2006 case in which police officers killed two suspected thieves in the Rivers State city of Port Harcourt; the February 2006 case in which four persons were killed when military and police officers stormed the Ariaria market in Aba, Abia State, on the pretext of preventing vigilantes from operating there; the June 2006 case in which the media reported that brothers Juth and Romanus Akpowbo were arrested in Kano State after having been accused of armed robbery of the staff quarters of Bayero University; or the August 2006 case in which police in Umuahia North Local Government Area killed 12 suspected robbers.

Violence and lethal force at unauthorized police and military roadblocks and checkpoints continued during the year, despite multiple announcements by the inspector-general of police that independent police roadblocks would be eliminated. Police generally ignored the orders. Security forces were known to kill persons while trying to extort money from them. For example, on November 8, a police officer in Anambra State shot and killed 15-year-old Daniel Offiali and wounded six other bus passengers after the driver refused to pay a \$0.16 (20 naira) bribe. The police officer was reportedly dismissed from the National Police Force and arrested, but at year's end the status of the case was unknown.

There were no developments in the June 2006 case in which Delta State police officers beat Peter Osimiri and left him for dead when he refused to pay a \$156 (20,000 naira) bribe, or in the December 2006 case in which police officers in the FCT outside Abuja shot and killed a driver who refused to pay a \$0.16 (20 naira) bribe.

The murder trial of a Delta State police officer who in 2005 shot and killed a commercial bus driver who was unable to pay a bribe had not begun by year's end.

The trial of six police officers from the Apo area continued, although with frequent and extended adjournments.

Police and military personnel used excessive force and sometimes deadly force in the suppression of civil unrest, property vandalism, and interethnic violence.

At year's end a police investigation was ongoing regarding a January 30 incident in which one person was killed and 20 others injured when violence erupted at the Oshogbo Local Government Office after several members of the local government council (LGC) asked the council's chairman to explain the expenditure of funds from the federal accounts. Police detained LGC Chairman Liadi Gbadamosi and declared 15 councilors wanted.

On July 24, police shot and killed two persons in Omi-Adio in Oyo State during a clash with members of the National Union of Road Transport Workers, who accused police of torturing and killing a union member the day before. The union members set the police station on fire and attacked the officer on duty. Police arrested 49 persons.

There were reports of summary executions, assaults, and other abuses carried out by military personnel and paramilitary mobile police across the Niger Delta (see section 1.g.).

There were several killings by unknown assailants that may have been politically motivated. For example, on February 2, unknown gunmen killed PDP Chieftain Lawson Onokpasa of Delta State at his residence.

On March 6, unidentified gunmen assassinated Taofiki Onigboho at his residence in Ibadan. Onigboho was related to Sunday Igboho, a suspected thug of Governor Rasheed Ladoja, who was being sought by police in connection with the February violence in Akure.

On August 19, Victor Obafaiye, the principal witness for the Action Congress in the Kogi State election tribunal, was assassinated. Obafaiye was crucial to the case as he was supposedly in possession of documents that would have served as evidence of election tampering by PDP House of Assembly candidate Dino Melaye.

On May 25, nine suspects allegedly connected to the July 2006 killing of Lagos State gubernatorial candidate Funsho Williams—including the three mobile policemen responsible for guarding him and four colleagues close to him—were imprisoned without trial; former IGP Sunday Ehindero declared the case closed despite the lack of a conviction. On June 9, Ehindero's successor, Michael Okiro, announced that the case would be reopened and investigated further, but there were no additional



developments by year's end.

Also on June 9, IGP Okiro announced the reopening of the case of Bola Ige, the former attorney general of the Federation whose killing in 2001 is widely believed to be linked to a political dispute between the then-governor and deputy governor of Osun State. On October 25, four persons who were detained by former IGP Ehindero on suspicion of involvement with the case were released due to lack of evidence.

On December 9, President Yar'Adua directed the IGP to reopen investigations into all unresolved cases of killings of political figures.

There were no developments in the following 2006 killings, which may have been politically motivated: the January killing by unknown assailants of Hajiya Saudatu Rimi, wife of former Kano State Governor Alhaji Abubakar Rimi; the June abduction and July killing of Plateau State gubernatorial aspirant Jesse Aruku of the Advanced Congress of Democrats party; the August killing of Ekiti State PDP gubernatorial candidate Ayodeji Daramola; and the December killing by unknown assailants of Timothy Ageba Uttah, the former council chairman of Gboko Local Government Area and PDP aspirant for the state House of Assembly of Benue State.

There were no developments in the July 2006 killings of four persons in Emohua and six persons in Gokana that resulted from violence between gangs controlled by rival political leaders in Rivers State.

By year's end no charges had been filed against five men accused of killing PDP politician Alhaji Lateef Olani-yan in Ibadan, Oyo State, in July 2005.

Killings carried out by organized gangs of armed robbers remained common during the year. In Oshodi, Lagos State, a group of armed robbers, popularly known as "area boys," operated illegal highway checkpoints at which they demanded money from motorists. There were no developments in the case of six area boys arrested in July 2006 for allegedly killing two Federal Road Management Agency officers.

Soldiers arrested 62 suspected area boys and remanded them to police for prosecution on charges related to a 2005 clash between soldiers and area boys. The incident followed the killing of a soldier near a military command in the Ikeja suburb of Lagos. Twelve of the area boys were arraigned before a magistrate's court and placed in custody to await trial.

Other organized vigilante groups continued to detain and kill suspected criminals. Police generally did not have a significant impact upon vigilante groups. They sometimes detained members of these groups during the year, but those arrests were sporadic, and none was known to result in prosecution. Initiatives announced in 2006 to control the vigilante groups were not successful during the year.

There continued to be reports of street mobs apprehending and killing suspected criminals during the year. There were no arrests reported from these mob actions, and there were no developments in cases from previous years. The practice of "necklacing" suspected criminals (placing a gasoline-soaked tire around a victim's neck or torso and then igniting it to burn the victim to death) by street mobs continued, according to persons who had witnessed burned corpses on the side of the road.

Lethal societal violence (including interethnic, intraethnic, and interreligious violence) continued.

There were cases of killings in connection with the conflict in the Niger Delta, including Port Harcourt (see section 1.g.).

#### b. Disappearance

There were no reports of politically motivated disappearances; however, there were kidnappings in connection with the conflict in the Niger Delta, particularly Port Harcourt (see section 1.g.). One abduction resulted in death.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution and law prohibit such practices and provide for punishment of such abuses, security services personnel, including police, military, and State Security Service (SSS) officers regularly beat protesters, criminal suspects, detainees, and convicted prisoners. Police physically mistreated civilians regularly to extort money from them. The law prohibits the introduction into trials of evidence and confessions obtained through torture.

There were reports that security forces tortured persons and used excessive force during the year. In March the UN Special Rapporteur on Torture visited the country at the government's invitation to assess the situation of ill treatment in the country. On the

basis of discussions with detainees, visits to prisons and police stations, and forensic medical evidence collected over a one-week period, the rapporteur reported that torture was endemic in law enforcement operations, including police custody, and was often used to extract alleged confessions of guilt. According to his report, the methods of torture included flogging with whips; beating with batons and machetes; shooting a suspect in the foot; threatening a suspect with death and then shooting him with powder cartridges; suspension from the ceiling; and denying food, water, and medical treatment.

On September 27, 25-year-old Surajo Mohammed died in detention while being interrogated by a Katsina State police sergeant who had arrested him for stealing a bottle of palm wine. State Police Commissioner Dan Doma announced that the officer had been arrested, but no trial had been scheduled by year's end.

There were no developments in the May 2006 case in which police in Delta State allegedly arrested Segun Pioko, tortured him, and killed him; in the October 2006 case in which Kano State police beat unruly youth with sticks and whips to clear the way for the motorcade of the governor; or in the April 2006 case in which four protesters died and 50 persons were arrested when police in the Njaba local government area of Imo State carried out reprisal attacks after youths rioted outside the local police station to protest police roadblocks in the area.

There were credible reports during the year that security forces committed rape and other forms of sexual violence on women and girls with impunity. Police officials acknowledged that rape was a problem. Amnesty International (AI) reported that women were frequently raped while in detention but did not report the abuse because of the social stigma attached to rape and the fact that police officers were the perpetrators. On December 10, the Network on Police Reform in Nigeria said it had monitored 400 police stations in 13 states for a year and found that killings, torture, extortion, and rape had become routine because the authorities shielded police officers from the law.

There were reports that security forces beat journalists during the year.

Different formulations of Shari'a penal codes (Islamic law) were in place in 12 northern states, and Shari'a courts delivered "hadd" sentences such as caning for minor offenses such as petty theft, public consumption of alcohol, and prostitution; it was unknown if any of the sentences were carried out by year's end. The term hadd refers to those crimes mentioned explicitly in the Koran. For example, those guilty of adultery are subject to death by stoning, but there were no such sentences imposed during the year, and no death sentences were carried out in cases originating in earlier years. In contrast to the previous year, there were no sentences of amputation handed down. However, there were numerous Shari'a cases from previous years pending appeal or implementation of sentence, including pending amputation and stoning sentences in Jigawa, Bauchi, Niger, Kano, and Zamfara States.

Statutory law mandates that state governors either impose a stay or implement amputation or death sentences. Sentences under Shari'a often were not carried out because of the lengthy process for appeals. Because no applicable case had been appealed to the federal level, federal appellate courts had yet to decide whether such punishments violate the constitution. Stoning and amputation sentences were previously overturned on procedural or evidentiary grounds but had not been challenged on constitutional grounds. Caning is also a punishment under common law in the Northern Region Penal Code and had not been challenged in the courts as a violation of the statutory law. In some cases convicted persons were allowed to choose to pay a fine or go to jail instead of being caned. These sentences were usually carried out immediately, while the Shari'a criminal procedure code allows defendants 30 days to appeal sentences involving mutilation or death. In practice appeals often took much longer than 30 days.

On August 4, Bauchi State police arrested 18 men and charged them with "addressing each other as women and dressing themselves as women," which is illegal under the Shari'a penal code. The men, all in their twenties, were also originally charged with sodomy, but the charges were later changed to "vagrancy" under the Bauchi State Islamic code. After being released on bail, all 18 men were rearrested on September 14 on new charges of criminal conspiracy, membership in an unlawful society, and obscene or indecent acts, which are collectively punishable by eight years in prison, caning, and fines. At a November 29 hearing, the Director of Public Prosecution (DPP) asked for postponement due to witnesses traveling. No trial date was announced by year's end.

In May the Shari'a court of Bauchi State sentenced Ade Dabo to death by stoning for the alleged rape of two female minors in 2003. Dabo appealed, and at year's end the case was pending confirmation by the newly elected Bauchi State governor. If confirmed, this case would represent the second stoning sentence carried out since Shari'a penal code was implemented in 2000.

There were numerous ethnic or communal clashes during the year. The government generally did not provide police in rural areas with sufficient resources to control societal violence.

Vigilante groups such as the Bakassi Boys, which continued to exist despite reports that it had been disbanded by the federal government, held detainees in informal detention centers, and detainees died during the year.

#### Prison and Detention Center Conditions

Prison and detention conditions remained harsh and life threatening. Most of the 227 prisons were built 70 to 80 years ago and lacked basic facilities. Lack of potable water, inadequate sewage facilities, and severe overcrowding resulted in dangerous and unsanitary conditions. With an estimated population of 45,000, some prisons held 200 to 300 percent more persons than their designed capacity. The government acknowledged overcrowding as the main cause of the harsh conditions common in the prison system. Excessively long pretrial detention contributed to the overcrowding.

In March the UN Special Rapporteur on Torture reported that prison conditions were deplorable, that those awaiting trial suffered more than those already convicted due to lack of funding for their care, and that inadequate medical treatment allowed many prisoners to die of treatable illnesses.

Following a July visit to 10 prisons in the states of Enugu, Kano, Lagos, and the FCT, AI issued a report citing appalling prison conditions, noting that many prisoners were considered "forgotten inmates" because they had been incarcerated for years without trial.

Disease was pervasive in the cramped, poorly ventilated facilities, and chronic shortages of medical supplies were reported. HIV/AIDS and tuberculosis were of particular concern within the prison population, and infections were exacerbated by substandard living conditions. Only those with money or whose relatives brought food regularly had sufficient food; petty corruption among prison officials made it difficult for money provided for food to reach prisoners. Poor inmates often relied on handouts from others to survive. Beds or mattresses were not provided to many inmates, forcing them to sleep on concrete floors, often without a blanket. Prison officials, police, and security forces often denied inmates food and medical treatment as a form of punishment or to extort money from them. The International Committee of the Red Cross (ICRC) continued to provide health and hygiene items to prisoners during the year.

Harsh conditions and denial of proper medical treatment contributed to the deaths of numerous prisoners. For example, on September 8, inadequate medical attention allegedly contributed to the death of Olawale Daniel, an inmate at the Agodi Federal Prison in Ibadan. His death sparked a riot between inmates and guards on September 11, which resulted in the deaths of 11 prisoners and the injury of an estimated 60 others, including four staff members.

Women were held with male prisoners, especially in rural areas. Although the law precludes the imprisonment of children, AI reported that children under 18 were held together with adults in at least four of the largest prisons. In Kuje prison 30 boys, some as young as 11, shared their living quarters with over 175 men. Detainees often were housed with convicted prisoners.

The government allowed international and domestic NGOs, including AI, Prisoners Rehabilitation and Welfare Action (PRAWA), and the ICRC, regular access to prisons. PRAWA and the ICRC published newsletters on their work. The government admitted that there were problems with its incarceration and rehabilitation programs and worked with groups such as these to address those problems.

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, police and security forces continued to employ these practices.

#### Role of the Police and Security Apparatus

The National Police Force (NPF) is responsible for law enforcement. Internal security is the duty of the SSS, which reports to the president through the national security advisor. Due to the inefficacy of the police, who were often unable to control societal violence, the government continued to rely on the army in some cases. Each NPF state unit was commanded by an assistant inspector general. The constitution prohibits state- and local-level governments from organizing their own police forces. The NPF committed human rights abuses and generally operated with impunity in the apprehension, illegal detention, and sometimes execution of criminal suspects. The SSS also was responsible for a variety of human rights abuses, particularly in limiting freedom of speech and press.

Corruption was rampant, most often taking the form of bribes at highway checkpoints. Police routinely stopped drivers who had committed no traffic infraction, refusing to allow a car to continue until the driver agreed to pay a bribe. On November 16, IGP Okiro dismissed nine police officers for alleged extortion and mounting of illegal road blocks in Lagos.

Although citizens could report incidents of police corruption to the National Human Rights Commission (NHRC), this agency was not empowered to act in response to such complaints.



## Arrest and Detention

Police and security forces were empowered to arrest without warrant based on reasonable suspicion that a person had committed an offense; they often abused this power. Under the law police may detain persons for 48 hours before charging them with an offense. The law requires an arresting officer to inform the accused of charges at the time of arrest and to take the accused to a police station for processing within a reasonable time. By law police must provide suspects with the opportunity to engage counsel and post bail. However, suspects were routinely detained without being informed of the charges, denied access to counsel and family members, and denied the opportunity to post bail for bailable offenses. Detainees often were kept incommunicado for long periods. Provision of bail was often arbitrary or subject to extrajudicial influence. In many areas there was no functioning bail system, so suspects were held in investigative detention for prolonged periods. Numerous suspects alleged that police demanded payment before they were taken to court to have their cases heard. If family members attended court proceedings, police often demanded additional payment.

Persons who happened to be in the vicinity of a crime when it was committed were reportedly held for interrogation for periods ranging from a few hours to several months. After their release, those detained were frequently asked to return repeatedly for further questioning.

There were many alleged cases of arbitrary arrest based on political motives. For example, on April 15, the All Nigeria Peoples Party (ANPP) governorship candidate in Kaduna State and other key officials of the party were arrested and detained by security agents. Some were released immediately following the presidential elections.

On April 18, the ANPP governorship candidate in Ebonyi State, Chief Ogonnaya Onu, was beaten and arrested after his supporters protested the results of the gubernatorial elections. Onu was released after the presidential elections.

On April 30, Emmanuel Ezeazu, secretary general of the Alliance for Credible Elections, was detained and questioned by the SSS in connection with a planned demonstration against the conduct of the April 22 elections. He was asked to sign an agreement not to organize or protest, but he declined to do so and was released on May 1.

Members of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), a separatist group espousing Igbo unity and the secession of Igbo states, initiated frequent violent clashes with the government, particularly in Onitsha, Anambra State. Police sometimes reacted by arresting large numbers of MASSOB members. Most of the 69 members arrested in a June 2006 sweep remained in detention at year's end.

In July a hearing resumed on the bail application of detained MASSOB leader Ralph Uwazurike, who was arrested with six of his deputies on treason charges in 2005. On October 26, a federal high court judge permitted Uwazurike to leave detention for three months to attend his mother's funeral. At year's end Uwazurike had not returned to detention, and it was unclear whether his trial would begin.

On June 14, a federal high court in Abuja granted bail to Majaheed Asari Dokubo, the leader of the Niger Delta People's Volunteer Force, who was arrested in 2005 for treason. Although the court cited Dokubo's reportedly deteriorating health, DPP Saliu Aliu attached conditions to the bail, noting Dokubo was still a threat to national security. The conditions included restrictions on traveling abroad, and if it was necessary to travel abroad, the requirement that he first inform the SSS and report to the nearest Nigerian embassy upon arrival. Dokubo was also barred from attending political rallies in Nigeria or abroad. Press reports indicated that Asari Dokubo's bail may have been discreetly approved by the federal government in a bid to appease militants in the Niger Delta region and bring them into negotiations.

In August three newspapers published articles calling for the release of Hamza Al Mustapha and four codefendants charged with the 1996 attempted murder of Alex Ibru, the minister of internal affairs under the Abacha regime and publisher of *The Guardian* newspapers. The Christian Association of Nigeria in 19 northern states and Abuja called for the immediate release of all five defendants in the interest of the peace and unity of the nation. Former head of state and retired general Ibrahim Babangida also made an appeal for their release in the interest of peace, development, and economic improvement. One defendant, Ishaya Bamaiki, was granted temporary bail at the end of 2006 to seek medical treatment abroad, but was later returned to prison in Lagos. Despite the attention given in the press, there were no developments in the pending trial by year's end.

The Economic and Financial Crimes Commission (EFCC) arrested and detained numerous government officials on corruption charges during the year. Critics charged that some arrests were politically motivated and that periods of investigative detention at times exceeded those allowed under the law.

Security forces detained journalists and demonstrators during the year.

Lengthy pretrial detention remained a serious problem, and human rights groups reported that detainees awaiting trial composed 60



percent of the prison population. Serious backlogs, endemic corruption, and undue political influence continued to hamper the judicial system. In a statement issued on September 4, Kano State Controller of Prisons, Muhammad Habib Ilyasu, said the Kano prison had over 900 inmates awaiting trial, some of whom would likely wait over 10 years before receiving a trial. The congestion in Kano Prison led to a clash between guards and detainees awaiting trial, resulting in the deaths of three guards and two detainees, and the hospitalizations of more than 20 inmates. Multiple adjournments in some cases led to serious delays. Police cited their inability to supply secure transportation for detainees on their trial dates as one reason why so many were denied a trial. The NHRC reported that some detainees were held because their case files had been lost. Some state governments released inmates detained for longer than potential maximum sentences without trial. Although detainees had the right to submit complaints to the NHRC, the commission had no power to respond. Detainees could also complain to the courts, but they often lacked the means of communicating with the court. Even detainees with legal representation often waited years to gain access to the courts.

#### Amnesty

Despite the government's announcement in January 2006 that it planned to relieve prison overcrowding by granting amnesty to 25,000 of the country's 45,000 prisoners, little progress was made on implementing this plan. However, the government often extended amnesties to those whose pretrial detention period exceeded the maximum sentence they would have received if convicted. In November 2006 then-president Obasanjo ordered an audit of the cases of all prisoners awaiting trial with an announced goal of releasing those who had been detained for long periods of time, those in ill health, or those over age 60, but there was no evidence that the audits took place. In May the government announced that it would free all prisoners over age 70 and all those over 60 who had been on death row for more than a decade; however, there was no evidence that any inmates were released.

On October 25, Kano State Governor Ibrahim Shekarau granted amnesty to 48 inmates in the Kano prison system.

On November 26, Chief Judge of Kwara State Raliat Elelu-Habeeb released 21 of the 200 pretrial detainees due to deteriorating health or unnecessary detention.

On December 23, Kwara State Governor Bukola Saraki granted amnesty to 30 inmates at the Oke-Kura Federal Prison in Ilorin. The 30 included 14 pretrial detainees, eight condemned prisoners, and eight additional prisoners who were close to completing their sentences.

#### e. Denial of Fair Public Trial

Although the constitution and law provide for an independent judiciary, the judicial branch remained susceptible to executive and legislative branch pressure. Political leaders influenced the judiciary, particularly at the state and local levels. Understaffing, underfunding, inefficiency, and corruption continued to prevent the judiciary from functioning adequately. There was a widespread perception that judges were easily bribed and that litigants could not rely on the courts to render impartial judgments. Citizens encountered long delays and frequent requests from judicial officials for bribes to expedite cases or obtain a favorable ruling. Judges frequently failed to appear for trials, often because they were pursuing other sources of income, and sometimes because of threats against them. In addition court officials often lacked the proper equipment, training, and motivation to perform their duties, with lack of motivation primarily due to inadequate compensation.

The Ministry of Justice implemented strict requirements for levels of education and length of service for judges at the federal and state level; however, there were no requirements or monitoring body for judges at the local level, leading to corruption and miscarriages of justice in those courts.

The regular court system is composed of federal and state trial courts, state appeals courts, the federal court of appeal, and the Supreme Court. There are Shari'a and customary (traditional) courts of appeal in states that use Shari'a for civil or criminal law, including a customary court in the FCT. Courts of first instance include magistrate or district courts, customary or traditional courts, Shari'a courts, and for some specified cases, the state high courts. The constitution also provides that the government establish a Federal Shari'a Court of Appeal and Final Court of Appeal, but these courts had not been established by year's end.

The constitution provides that states may establish courts based on common law or customary law systems. The law also provides that states may elect to use the Shari'a Penal Code in the courts. While the Shari'a courts had been in operation throughout the northern part of the country for centuries, in 2000, Shari'a courts were empowered to hear criminal cases and pass sentences based on the Shari'a penal code, which outlines hadd offenses and punishments, including caning, death by stoning, and amputation.

The nature of the case usually determined which court had jurisdiction. The return to the Shari'a courts stemmed at least in part from inefficiencies and corruption in the regular court system.

Defendants have the right to challenge the constitutionality of Shari'a criminal statutes through the common law appellate courts; however, no challenges with adequate legal standing reached the common law appellate system. The constitution also provides for the government to establish a federal Shari'a court of appeal; however, this had not been done by year's end. The highest appellate court for the Shari'a remained the Supreme Court, staffed by common law judges who were not required to have any formal training in the Shari'a penal code.

#### Trial Procedures

According to the constitution, persons charged with offenses have the right to an expeditious trial. Criminal justice procedures call for a trial within three months of arraignment for most categories of crimes; however, there were considerable delays, often stretching to several years, in bringing suspects to trial. The law did not provide for juries to be used in trials. Most detainees were poor and could not afford to pay the informal costs associated with moving their trials forward, and as a result they remained in prison. Wealthier defendants employed numerous delaying tactics and in many cases used bribes to persuade judges to grant numerous continuances. Such practices clogged the court calendar and prevented trials from starting or progressing.

Trials in the regular court system were public and generally respected constitutionally protected individual rights in criminal cases, including a presumption of innocence, and the right to be present, to confront witnesses, to present evidence, and to be represented by legal counsel. Although an accused person is entitled to counsel of his choice, there is no law preventing a trial from going forward without counsel, except for certain offenses such as homicide or other offenses for which the penalty is death. The Legal Aid Act provides for the appointment of counsel in such cases, and stipulates that a trial does not go forward without counsel.

In both common law and Shari'a courts, indigent persons without legal representation were more likely to have their sentences carried out immediately upon being sentenced, although all accused persons have the right to appeal. The federal government instituted a panel of legal scholars in 2003 to draft a uniform Shari'a penal code to replace divergent Shari'a codes adopted by various northern states; however, the panel did not produce its report during the year, and states continued to apply their individual codes.

There were no legal provisions barring women or other groups from testifying in civil or criminal proceedings or giving their testimony less weight, but the testimony of women and non-Muslims usually was accorded less weight in Shari'a courts. Some "qadis" (Shari'a court judges) allowed separate evidentiary requirements to prove adultery or fornication for male and female defendants. For women, the incidence of pregnancy, which customarily is disallowable as evidence, was deemed permissible in some Shari'a courts. By contrast, men could only be convicted by confessing to the crime or by eyewitness testimony. However, Shari'a courts did provide women with some benefits, including increased access to divorce, child custody, and alimony, because it was significantly easier, faster, and cheaper to get an audience in a Shari'a court.

#### Political Prisoners and Detainees

There were no reports of political prisoners or detainees; however, persons arrested in previous years for alleged treason remained in detention at year's end.

#### Civil Judicial Procedures and Remedies

The constitution and law provide for an independent judiciary in civil matters; however, the executive and the legislature also exerted undue influence and pressure in civil cases. A widespread lack of will by authorities to implement court decisions interfered with due process even when the executive branch did not attempt to compel a civil court to make a particular decision. The law provides for access to the courts for the redress of grievances, and courts can award damages and issue injunctions to stop or prevent a human rights violation. However, the decisions of civil courts were extremely difficult to enforce.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, but authorities at times continued to infringe on these rights. Police raided homes without warrants during the year.

The Federal Capital Development Authority (FCDA) continued to demolish homes and businesses in the FCT in spite of multiple court injunctions prohibiting further demolitions. The government typically claimed that the homes or offices that were demolished lacked proper permits and consequently did not provide compensation to the owners, who were sometimes able to produce paperwork indicating the structures were built legally. There was no transparent legal process for deciding which homes would be bulldozed, and those who had their homes bulldozed had no recourse to appeal and received no compensation. The FCDA maintained the public position that the homes and offices did not comply with the master plan for the city. Hundreds of thousands of persons had been left homeless by demolitions that occurred over the past three years, and estimates of the number of homes and offices destroyed varied widely. There was widespread opinion that the demolitions were primarily motivated by corruption and

discrimination based on socioeconomic class since mostly lower and middle class persons lost their homes, which were then sold to wealthy persons with connections to government officials.

On June 14, the FCDA demolished part of the office complex of Daar Communications PLC, owner of Africa Independent Television (AIT) and Ray Power Radio in the Asokoro area of Abuja. Three buildings, including those housing the studios and operations center, were destroyed. The FCDA claimed the station disregarded FCT planning rules, encroached on neighboring property, and was using residential premises for commercial purposes. However, Ladi Lawal, Managing Director of Daar, said that the FCDA visited and inspected the site on several occasions while it was being built.

Following his July appointment as minister of the FCT, Aliyu Modibbo Umar launched an investigation into the demolitions conducted by the previous minister and soon announced that demolitions would continue in order to restore the city's "master plan." On August 11, he ordered the demolition of the FCT Police Command, claiming the building lacked approval to be there.

On August 20, the governor of Nassarawa State, Aliyu Akwe Doma, announced plans to demolish the "slums" bordering the FCT. The unplanned housing areas expanded in Nassarawa over the year due to the forced eviction of persons from Abuja.

#### g. Use of Excessive Force and Other Abuses in Internal Conflicts

The Niger Delta region of the country was home to Africa's largest oil industry, which exported an estimated 2.4 million barrels of crude per day. Particularly since 2006, militant groups increasingly employed violence, including kidnapping of oil company workers, to demand greater control of the region's resources. Abductions for ransom, armed robberies, gang turf wars, and fighting connected to the theft of crude oil, known as oil bunkering, continued during the year and contributed to a sharp decline in the region's general security and economic vitality.

Criminal gangs in areas such as Port Harcourt, Rivers State, were widely believed to be sponsored by politicians to intimidate opponents and aid election rigging. Some of these gangs (called "cults" locally) had amassed significant wealth and power. Violent power struggles between gangs resulted in hundreds of deaths, including of civilian bystanders, and reportedly damaged personal property and homes.

Numerous hostage situations occurred during the first eight months of year. In some areas tensions remained high between oil producing communities and oil company employees and contractors. Over 200 persons (Nigerian nationals and expatriates) were kidnapped in approximately 60 incidents during the year. Many kidnappings were perpetrated by militant groups trying to force the government to develop local economies, increase local control of oil revenues, or release prisoners; others were conducted primarily for financial gain. Oil facility guards and JTF soldiers were among those killed in these incidents. During the year Port Harcourt criminals began to kidnap the relatives (usually children or mothers) of prominent state politicians for ransom or to force payment for services, such as protection detail and voter intimidation, that were rendered during the elections.

Government authorities responded to a number of these incidents by deploying the JTF to the region. The JTF—a unit composed of the various military branches that was established by the government in 2003 to restore stability in the Niger Delta region—reportedly used excessive force and engaged militants and criminals in gun battles, which occasionally resulted in civilian casualties and worsened security.

According to a report from Doctors Without Borders, violence in Port Harcourt reached unusually high levels during the first two weeks of August, resulting in 71 gunshot wounds, 27 stabbings, 16 serious beatings, and one rape; seven persons died from their injuries. On August 6, doctors reported an influx of patients arriving from all across the city. Most of the injured were innocent bystanders who were either at a market or near a bus station when armed gangs began shooting indiscriminately into crowds. The government deployed troops and helicopter gunships to the city. There were numerous reports that military fire reached civilian targets.

#### Killings

On March 4, after several days of rival gang clashes in Port Harcourt, 10 persons were killed. While it was not often clear which gang was responsible, violence was often attributed to militant group leaders Soboma George and rival Ateke Tom.

On May 29, gang leader Prince Igodo was killed during a gun battle allegedly led by Soboma George. It was widely believed that a former governor contracted George to kill Igodo to prevent his disruption of the new governor's inauguration and as retribution for Igodo's role in kidnapping the incoming governor's mother earlier in the year.

On June 21, JTF troops killed a dozen gunmen who were holding two dozen workers and soldiers hostage at a flow station run by Italian energy company Eni Spa. The gunmen had seized the oil installation four days earlier.



On August 16, the JTF launched a raid on an alleged hideout of militants who had been fighting in the streets of Port Harcourt for days. The raid initiated a day-long gun battle between the JTF and rival militant groups, resulting in the deaths of at least 40 persons, including innocent civilian bystanders.

On September 14, the JTF launched an attack on a suspected criminal hideout near Ogbogoro, Rivers State, using helicopter gunships and ground troops; an undetermined number of killings resulted. According to a JTF spokesman, the target was a criminal gang suspected of killing three village chiefs and two others in Port Harcourt.

Although the JTF contributed to the level of violence in some situations, observers reported that the force added to the region's overall level of security by filling a void left by the ineffective Nigerian Police Force.

There were no developments in the August 2006 case in which military security forces in the Niger Delta opened fire on a boat conveying suspected militants, killing 10 persons.

#### Abductions

Militants and criminals abducted more than 200 persons during the year, including women, children, and foreign citizens. The majority of abductions took place at oil facilities despite the presence of armed guards and military police escorts.

For example, on July 6, the three-year-old daughter of a British national in Port Harcourt was abducted on her way to school and released three days later. On July 13, the three-year-old son of the traditional ruler of Iriebe, Rivers State, was abducted on his way to school and released the following day.

On August 16, John Hana-Daher, a Syrian national, died after spending 31 days as a hostage in Bayelsa State. Bayelsa State Governor Chief Timipre Sylva said five suspects were arrested in conjunction with Hana-Daher's kidnapping; no names or further information was provided.

#### Section 2 Respect for Civil Liberties, Including:

##### a. Freedom of Speech and Press

The constitution and law provide for freedom of speech and of the press; however, the government sometimes restricted these rights in practice. Security forces beat, detained, and harassed journalists, some of whom practiced self-censorship.

There was a large and vibrant private domestic press that frequently criticized the government. Only one national, government-owned daily newspaper was published. Several states owned daily or weekly newspapers that also were published in English. These publications tended to be poorly produced, had limited circulation, and required large state subsidies to continue operating. There were more than 14 major daily newspapers, six weekly newsmagazines, and several sensationalist evening newspapers and tabloid publications.

Because newspapers and television were relatively expensive and literacy levels were low, radio remained the most important medium of mass communication and information. The government owned and controlled much of the electronic media. The National Broadcasting Commission (NBC) was responsible for the deregulation and monitoring of the broadcast media.

The national television station, Nigerian Television Authority, was federally owned. The law requires local television stations to limit programming from other countries to 40 percent and restricts the foreign content of satellite broadcasting to 20 percent. The NBC's 2004 ban on live broadcast of foreign news and programs remained in force, although there were no restrictions on live news broadcast through international cable or satellite services.

Unlike in the previous year, there were no reports that journalists were killed.

There were no developments in the 2006 killing by unknown assassins of Godwin Aybroko, editor and columnist of *This Day* newspaper in Lagos.

Security forces beat journalists. For example, on May 1, journalist Dare Folorunso was taken to a hospital in a coma after several Ondo State policemen, including Deputy Commissioner Joshua Mumbo, beat him. Police objected to Folorunso taking photos during a May Day rally at Akure Stadium and attempted to confiscate his camera, at which point Folorunso defended himself. He later recovered and was discharged. The local Union of Journalists asked police to pay compensation and offer Folorunso a public apology; however, no action was taken by year's end.

Security forces detained journalists and seized newspapers during the year. For example, on January 9, SSS agents raided the offices of the daily newspaper *Leadership*. Agents seized documents and detained reporter Danladi Ndayebo for nine hours, questioning him about his sources for a January 6 story that contended presidential candidate Peter Odili was forced out of the primaries by then-president Obasanjo. The SSS sealed the *Leadership* offices, questioned staff, and demanded copies of the original draft of the story. SSS agents also detained Editor Bashir Bello Akko for 15 hours, General Manager Samuel Nda-Isaiah for nine hours, and staff member Abubakar Dzukogi for two hours.

On January 10, SSS officials detained Abuja *Inquirer* publisher Dan Akpowa and editor Sode Abbah in connection with a story that claimed a military coup was possible because of a public disagreement between former president Obasanjo and former vice president Atiku Abubakar. SSS agents sealed the newspaper's office and seized computer discs, a hard drive, and copies of the newspaper. Akpowa was released after 36 hours, and Abbah was released after 48 hours.

On June 27, 15 armed men, including two police officers in uniform, stormed the printing plant of privately owned weekly paper *Events* in Uyo, Akwa Ibom State, and allegedly seized about 5,000 copies of the newspaper. The men arrived in five vehicles, one of which had a government license plate from southern Akwa Ibom State. The raid was linked to an article in the paper reporting an alleged criminal indictment against Governor Godswill Akpabio over illicit business transactions in neighboring Abia State. Although Governor Akpabio had been indicted by a commission of inquiry, he had not been formally indicted by a court. The paper republished the story the following day without incident. On October 10, the SSS arrested *Events* editor Jerome Imeime and charged him with sedition for criticizing the state's governor on the front page of the paper. Imeime was released three weeks later, and no further information was available at year's end.

At year's end journalist Rotimi Durojaiye remained free on bail while an appeals court considered the constitutionality of the June 2006 sedition charge against him for reporting that former president Obasanjo had purchased a secondhand airplane.

The government suspended television and radio stations during the year.

On April 16, the SSS, backed by the police, forcefully entered the transmission studio of AIT and forced the staff to stop transmitting a documentary critical of President Obasanjo and the ruling PDP. In place of the documentary, a tape conveying campaign activities of PDP presidential candidate Yar'Adua and highlights of Obasanjo's achievements was played. SSS agents seized tapes of all commercially sponsored programs that were scheduled for that day and also shut down AIT's sister radio station, Ray Power FM. Press reports quoted SSS Spokesman Ado Muazu as saying that the programming had "security implications." The NBC warned the station that it would face "serious sanction" if it aired the program again.

On May 23, armed men invaded the Broadcasting Corporation of Oyo State, where the Oyo State radio and television stations were located. Some workers were injured as the men vandalized the studios, carted away broadcast equipment, and disrupted broadcasting. The affiliation of the armed men had not been determined by year's end.

Local NGOs suggested that newspaper editors and owners underreported actual human rights abuses and killings, particularly election-related violence, due in part to government intimidation.

The law criminalizes libel and requires defendants to prove the truth of opinion or value judgment contained in news reports or commentaries. This limited the circumstances in which media defendants could rely on the defense of "fair comment on matters of public interest" and restricted the right to freedom of expression. Penalties for libel ranged from one to seven years' imprisonment.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. However, several Internet news sites critical of the government experienced server problems which site owners attributed to government interference. Such disruptions in service usually lasted a few hours to a day.

Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. A 2006 survey revealed that only 1.3 percent of households owned a personal computer and that 1.5 percent of households had fixed line telephone service. However, these limits were attributed to poverty rather than government restriction. Cyber cafes were widely available in metropolitan areas and unmonitored by the government.

#### Academic Freedom and Cultural Events

State governments continued to restrict academic freedom by controlling curriculum at all levels, including mandating religious instruction. Student groups alleged that numerous strikes, inadequate facilities, and the rise of gangs on campuses, particularly in the south, continued to hamper educational progress.

## b. Freedom of Peaceful Assembly and Association

### Freedom of Assembly

The constitution and law provide for freedom of assembly, and the government generally respected this right for progovernment rallies, while opposition gatherings continued to be restricted. In areas that experienced societal violence, police and security forces permitted public meetings and demonstrations on a case-by-case basis.

Police frequently cited the 1990 Public Order Act to disband meetings critical of the government, in spite of the Abuja High Court's 2005 decision to strike down the Act, which required a police permit to be issued for all public rallies and processions. The attorney general and the Nigerian Police Force filed an appeal over the High Court's decision, and on December 11, the Court of Appeal in Abuja declared that it would no longer be necessary to obtain a permit for any assembly and that the Public Order Act infringed upon the fundamental rights provided for in the constitution. On December 14, however, the inspector general of police announced that the police force would appeal the decision to the Supreme Court. The case was ongoing at year's end.

The government occasionally banned gatherings whose political, ethnic, or religious nature might lead to unrest. Open-air religious services held away from places of worship remained prohibited in many states due to fears that they might heighten interreligious tensions. The Kaduna State government ban on processions, rallies, demonstrations, and meetings in public places still was enforced on a case-by-case basis. A security forces committee ban on all political, cultural, and religious meetings in Plateau State continued to be implemented on an ad hoc basis.

On March 10, groups affiliated with the PDP and DPP went on a 48-hour vandalism spree in Sokoto, destroying each other's party offices and members' vehicles. Several injuries were reported, and the police responded by banning all political rallies in the state, a decision that remained in effect through the April elections.

On April 29, then-IGP Ehindero told the media that he instructed state commissioners not to grant permits for political rallies or processions and that any rally held without police permit would be dispersed forcefully. The use of tear gas was approved as a means of dispersal.

Security forces forcibly dispersed and arrested demonstrators during the year, resulting in numerous injuries. On May 1, during the nationwide Labor Day celebrations, Abuja police detained over 235 persons for attempting to protest the recent elections, and police in Lagos arrested approximately 80 others. In Benin City, Edo State, the SSS beat the presidential candidate of the National Conscience Party, Osagie Obayuwana, as he and his followers tried to take part in the annual Labor Day celebration. Obayuwana and Chief Dide Adodo, an official of the Labour Party, were arrested by the SSS but were subsequently released.

On July 12, a team of mobile police officers accompanied by officials on the Abuja Environmental Protection Board (AEPB) disbanded an Abuja rally to launch the HungerFREE campaign to draw attention to hunger in the country. AEPB officers arrested Ojobo Atuluku, the country's nominee to the UN Committee on the Rights of the Child, and 20 other employees of ActionAid International, Nigeria (AAIN). AEPB official Muhammed Abuja, who led the arrest, stated that the march was illegal since the organizers did not obtain the board's permission. The police officers roughly handled the AAIN employees and sprayed teargas to disperse the crowd.

The court case remained pending for the 24 civil society representatives arrested in February 2006 for protesting a proposed constitutional third term; the 24 were granted bail.

There were no developments in other numerous 2006 cases in which police and army units forcibly deployed demonstrators.

### Freedom of Association

The constitution and law provide for the right to associate freely with other persons in political parties, trade unions, or special interest associations, and the government generally respected this right in practice. The constitution and law allow the free formation of political parties. There were 51 parties registered with the Independent National Electoral Commission (INEC) at year's end.

## c. Freedom of Religion

The constitution and law provide for freedom of religion; although the federal government generally respected religious freedom, there were instances in which limits were placed on religious activity to address security and public safety concerns.

The constitution prohibits state and local governments from adopting or giving preferential treatment to a religious or ethnic



community; however, states, whether predominately Christian or Muslim, generally favored the faith practiced by the majority of their residents. Some Christians alleged that the 2000 reintroduction and enforcement of criminal aspects of the Shari'a legal system and the continued use of state resources to fund the construction of mosques, the teaching of qadis (Shari'a court judges), and subsidies for the pilgrimage to Mecca across the 12 northern states amounted to the adoption of Islam as a de facto state religion. Moreover, the Civil Liberties Organization (CLO) contended that the establishment of a Ministry of Religious Affairs and the creation of a preacher's council in Zamfara State was tantamount to adopting Islam as a state religion. However, several states, including northern states, apportioned funds to finance Christian pilgrimages to Jerusalem and to construct churches.

The constitution provides that states may establish courts based on the common law or customary court law systems. Individual states in the north had elected to create Shari'a courts alongside the common law and customary courts. Many other states, including central states Benue and Plateau, had Shari'a appellate courts. In 2000, 12 northern states (Sokoto, Kebbi, Niger, Kano, Katsina, Kaduna, Jigawa, Yobe, Bauchi, Borno, Zamfara, and Gombe) reintroduced criminal law aspects of the Shari'a legal system. Prior to 2000 the courts used the Shari'a system to adjudicate civil matters only. Adherence to Shari'a criminal law was compulsory for Muslims in some states and optional in others. While the constitution technically does not permit non-Muslims to consent to Shari'a jurisdiction, in practice non-Muslims have the option of submitting to Shari'a jurisdiction when the penalty under the Shari'a is less severe than under civil law (e.g., a fine rather than a prison sentence).

Although several northern states continued to ban public proselytizing to forestall ethnoreligious violence, some Christian proselytizing groups remained active despite these formal bans. The bans generally were enforced on a case-by-case basis.

The constitution does not require students to receive religious instruction in secular public schools. However, state governments occasionally passed laws seeking to incorporate religious studies into the curriculum. NGOs such as the CLO claimed that the 12 northern states had made Islamic religious education compulsory in previously secular public schools. Authorities of several of these states claimed that schools did not require students to attend classes of a religious group other than their own, and that students could request a teacher of their own religious beliefs to provide alternative instruction. However, there were often no teachers of "Christian Religious Knowledge" in many northern schools or of "Islamic Religious Knowledge" in southern schools.

Although the government generally did not restrict distribution of religious publications, it sporadically enforced a ban against broadcasting religious advertisements on state-owned radio and television stations. Private radio stations regularly broadcast religious programming.

Although the expanded jurisdiction of Shari'a did not apply to non-Muslims in civil and criminal proceedings, certain social mores inspired by Shari'a, such as the separation of the sexes in public schools, health care, and transportation services, affected non-Muslim minorities in the north. Although most Shari'a states did not criminalize alcohol consumption by non-Muslims, Kano State maintained laws providing for steep fines and prison sentences for the distribution and public consumption of alcohol. However, there were no reports of non-Muslims being penalized during the year. In spite of the ban, alcohol was available in Kano at hotel bars and restaurants. In some northern states, government officials restricted the sale and public consumption of alcohol to federal government installations, such as military and police barracks.

Some states continued to offer gender-segregated transportation. State governments in Bauchi, Kano, Niger, and Zamfara provided motorcarriages—similar to a motorized rickshaw—for Muslim women who were not permitted to ride on motorcycle taxis ("okadas").

A number of states with expanded Shari'a laws sanctioned enforcement of such laws by private groups known as the Hisbah, which were funded by state governments. In some cases these groups had authority to make arrests, but they primarily served as traffic wardens and helped regulate commercial activity in the marketplace. The Hisbah groups were active during the year in Zamfara, Niger, and Kano States.

#### Societal Abuses and Discrimination

The law prohibits religious discrimination in employment and other practices; however, private businesses frequently discriminated on the basis of religion or ethnicity in their hiring practices and purchasing patterns. In nearly all states, ethnic rivalries between "indigenes" and "settlers" led to some societal discrimination against minority ethnic and religious groups.

Religious differences often mirrored regional, tribal-ethnic, and occupational differences. For example, in many areas of the Middle Belt, Muslim Fulani tended to be pastoralists, while the Muslim Hausa and most Christian Igbo and other ethnic groups tended to be farmers or work in urban areas. Consequently ethnic, regional, economic, and land use competition often correlated with religious differences between the competing groups. Interreligious tension between Christians and Muslims remained in some areas, and conflicts of a seemingly socioeconomic or political nature often divided persons along religious lines.

There were a few instances of societal abuse and discrimination against members of Jehovah's Witnesses who refused for religious reasons to join local age-grade associations or women's associations. Communities in Abia State sometimes ostracized Jehovah's

Witnesses, denying them the right to sell goods in the public market or to retrieve water from the public tap.

Ethnoreligious violence resulted in numerous deaths and the displacement of hundreds of persons throughout the country. Most persons displaced by violence sought refuge with family, friends, or communities where their ethnic group was in the majority. Most displacement was temporary, however, as the majority of persons—including most of the 50,000 persons displaced in 2006—returned to their homes once the violence subsided.

For example, on April 13, unknown assailants shot and killed prominent Islamic cleric Ustaz Ja'afar Adam and one of his followers inside a mosque in the northern city of Kano. The killing of Adam, a member of the strict Wahabbi strain of Islam, was allegedly due to a dispute between Islamic sects.

On September 29, violence erupted in the Tudun Wada area of Kano State after a Christian teacher allegedly displayed a caricature of the Prophet Muhammad in his classroom. Nine persons were killed and churches were razed during altercations between Muslim and Christian youths.

On December 11, violence erupted in Yelwa, Bauchi State, following the demolition of a mosque by persons who were allegedly upset that it was being constructed on the grounds of a public secondary school. In retaliation, Muslim youths destroyed churches and properties belonging to Christian residents. Many residents fled their homes during the violence and remain in neighboring villages. The military was deployed to the area and imposed a curfew to calm the violence.

In July interreligious riots were sparked between Sunni and Shi'a residents of Sokoto following the July 18 shooting and killing of Sunni cleric Umaru Dan-Maishiyya, allegedly by members of Sokoto's Shia minority. Police arrested 112 persons, and the SSS detained Shia leader Malam Kasimu Tawaye and several dozen of his followers for several days without formal arraignment. The press reported that the SSS destroyed a clinic, school, and living quarters of the Shia community in Sokoto. The Sokoto State government and federal government pledged to investigate fully Dan-Maishiyya's killing; however, little progress has been made in the investigation by year's end.

There were no developments in the 2006 case in which thousands of persons were internally displaced as a result of widespread rioting and sectarian violence sparked by protests over caricatures of the Islamic Prophet Muhammed; in the February 2006 rioting in Maiduguri, Borno State; in the February 2006 case in which 25 persons were reportedly arrested in a demonstration in Bauchi State; in the February 2006 case in which a riot broke out when unidentified Muslim students at a nursing school in Sokoto threatened a female Christian student after she used inflammatory language denigrating the prophet Muhammed; or in the September 2006 case in which churches in Jigawa State were burned. There were no reports that the government took action on a 2006 petition for aid by members of Jehovah's Witnesses victimized in 2005.

There were no reports of anti-Semitic acts during the year.

For a more detailed discussion, see the *2007 International Religious Freedom Report*.

#### d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution and law provide for freedom of movement, foreign travel, emigration, and repatriation, and while the government generally respected these rights, police occasionally restricted freedom of movement by enforcing curfews in areas experiencing ethnoreligious violence. Security and law enforcement officials continued to use excessive force at checkpoints and roadblocks and engaged in extortion and violence. On some stretches of road police maintained checkpoints every few miles.

A September 2006 ban imposed by FCT authorities on okadas continued in the city of Abuja. The FCT claimed the okadas were dangerous, but they were the sole source of transportation for many. The ban forced commuters to walk many miles or hitch a ride in private vehicles to get to and from work every day.

Kano State's 2005 ban prohibiting okadas from taking female passengers continued during the year. The ban did not affect non-Muslim women, and the government provided private motorcarriages for Muslim women to use.

The law prohibits the expulsion of citizens, and the government did not use forced exile. Ismaila Gwarzo, national security advisor to former president Abacha, remained restricted to his hometown in Kano State after former president Obasanjo issued the informal injunction to prevent Gwarzo from allegedly plotting against him.

The FDCA continued to demolish homes and businesses in the FCT, which left numerous persons homeless.

#### Internally Displaced Persons (IDPs)



Ethnic conflict along the Benue State and Taraba State border resulted in the displacement of hundreds of persons in July and August as they fled their homes to avoid further persecution in the decades old tribal feud over farmland and political power. The governors of Benue and Taraba states held several "peace summits" with local leaders and tribal chiefs that helped subdue the violence, but most of those displaced had not returned home by year's end.

#### Protection of Refugees

The law provides for the granting of asylum and refugee status to persons in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. The government provided protection against refoulement, the return of persons to a country where there is reason to believe they feared persecution, and granted refugee status or asylum. The government cooperated with Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers through the National Commission for Refugees, its federal commissioner, and the National Emergency Management Agency. The Eligibility Committee (on which the UNHCR had observer status), governed the granting of refugee status, asylum, and resettlement, and reviewed refugee and resettlement applications.

Refugee camps were generally overcrowded, and refugees' requests for police and judicial assistance generally received little attention. Refugees had poor access to the courts, but observers noted that it was no worse than that of citizens.

The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 convention and the 1967 protocol and provided it to a small number of persons during the year.

In August the government signed a multipartite agreement with the governments of Liberia and Sierra Leone, the Economic Community of West African States, and UNHCR to locally integrate Liberian and Sierra Leonean refugees in Nigeria. On November 27, the government held a national conference in Abuja to develop a plan to implement the integration.

#### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The constitution and law provide citizens with the right to change their government peacefully through periodic, free, and fair elections held on the basis of universal suffrage; however, citizens' right to change their government was abridged during the most recent national and state elections in April, which were conducted amid widespread fraud and numerous incidents of violence.

#### Elections and Political Participation

On May 29, Umaru Musa Yar'Adua was sworn in as president with his Vice President Goodluck Jonathan. The inauguration marked the first transition from one elected presidential administration to another since the country gained independence from colonial power Britain in 1960. Unfortunately, the April election that brought them to power was deemed fundamentally flawed by citizens and international observers alike. On August 28, as part of his pledge to address the shortcomings in the electoral system, President Yar'Adua established the Electoral Reforms Panel, comprised of governmental and NGO representatives, which was charged with bringing the electoral process up to international standards.

The April 2007 presidential, national assembly, gubernatorial, and state-level elections were marred by poor organization, widespread fraud, and numerous incidents of violence. The government, through INEC, undertook voter registration; however, this effort was poorly organized, seriously flawed, incomplete, and not widely publicized. Although INEC claimed 60 percent voter turnout nationwide, most independent observers estimated it at less than 20 percent. In some states, local and international observers reported that they were unable to locate any open polling stations where voting was supposed to be taking place, despite INEC's later claims of voter turnout well above 50 percent for those polling stations. In other states, observers noted polling stations did not open until the late afternoon and were forced to close in the early evening due to darkness or state curfews, thereby restricting the number of voters who could be processed and allowed to vote.

A total of 43 parties participated in the national assembly elections, and 24 parties fielded candidates in the presidential election. The European Union Election Observation Mission stated that the elections "fell far short of basic international and regional standards for democratic elections," while the Transition Monitoring Group—a coalition of over 60 organizations throughout the country that monitors elections, encourages participation, and promotes proper voting procedures—described the elections as "a charade." All major independent observer groups, international and domestic, issued questioning statements about the fairness of the elections and cited problems throughout the country including ballot stuffing, intentional miscounting at both polling stations and ballot compilation stages, underage voting, multiple voting, intimidation, violence, and political killings resulting in at least 300 deaths. Although all parties participated in the misconduct, observers cited violations by the ruling PDP significantly more often than those other parties.

Following the elections, election tribunals received over 1,250 legal motions filed across the country to overturn the results of

individual elections for all levels of government posts, including the presidency. Both major rival candidates of Yar'Adua—Atiku Abubakar and Muhammadu Buhari—petitioned for the annulment of the presidential race. The cases filed to overturn National Assembly results included a case contesting the election of Senate President David Mark in Benue State. By year's end several tribunals had concluded their deliberations, resulting in the nullification of nine local-level elections, six senatorial elections, and five gubernatorial elections. Due to discrepancies during the 2003 elections, the government passed the Electoral Act of 2006, which outlines the legal procedures for conducting and contesting an election. Although it was widely accepted that the 2007 elections were fraudulent, most of the tribunals overturned elections based on technicalities such as not having the party logo on the ballot or not having the party name listed, rather than for criminal activity related to the elections.

Political violence occurred at federal, state, and local levels, as well as within political parties, but statistics on political violence were difficult to obtain. Even NGOs within the country could not agree on what constituted political violence or how many such incidents occurred. By March 30, 51 cases of killings, kidnappings, and clashes among supporters in Bayelsa, Bauchi, Benue, Rivers, and Delta states were recorded by the Nigerian Alliance for Peaceful Elections. The South Africa-based Institute for Democracy claimed that as many as 280 persons were killed in the country between February and March. The government made little effort to investigate or bring charges in any of these cases of political violence.

Incidents of political violence include the February case in which at least 35 persons were killed during seven days of clashes in the Ogoni region of Rivers State, where two of Governor Peter Odili's associates were fighting over political control.

On March 10, fighting broke out between PDP and ANPP supporters in Abeokuta, Ogun State, after PDP supporters allegedly forced ANPP vehicles to stop. Four persons died and others were critically injured, several vehicles were destroyed, and ANPP gubernatorial candidate Senator Ibikunle Amosun was arrested on March 11 for inciting the violence. Amosun was held for two days before being released, and no charges were ever filed.

On March 20, armed DPP supporters in Gombe stormed a magistrate's court, forcibly freeing DPP gubernatorial candidate Abubakar Habu Hashidu and wounding the judge presiding over his case. On March 18, Hashidu and 14 of his supporters were arrested for allegedly inciting a riot in Gombe. Hashidu and his supporters maintained they were defending themselves against an attack by a group called Yan Kalare, widely believed to be a PDP-supported group.

There were no developments in the 2006 cases in which violence marred PDP local government congresses in several states.

The electoral law allowed those who felt they had been disenfranchised to leave their existing party and form a new one. There were allegations that new parties were established by the PDP for the purpose of confusing voters with large numbers of candidates.

There were no developments in the 2006 cases in which the SSS detained and questioned the leader of the Advanced Congress of Democrats, a political party that had recently been formed by former members of the ruling PDP; or in which eight leaders of the Turaki Vanguard, a campaign group supporting the vice president, were charged with belonging to an unlawful society.

Although there were more than 500 ministerial and National Assembly positions, there were only six female ministers, nine female senators, and 27 female representatives at year's end.

To promote national unity and loyalty, the law mandates that the composition of the federal, state, and local governments and their agencies, as well as the conduct of their affairs, reflect the diverse character of the country. The government was an example of this diversity: President Yar'Adua is a Fulani from the northern city of Katsina, the vice president is an Ijaw from the southern state of Bayelsa, and the senate president is an Idoma from the central state of Benue. The government also attempted to balance other key positions among the different regions and ethnic groups. The political parties also engaged in "zoning," a practice of rotating positions within the party among the different regions and ethnic groups to ensure that each region was given adequate representation. Despite this effort, with more than 250 ethnic groups, it was difficult to ensure representation of every group in the government.

#### Government Corruption and Transparency

Corruption was massive, widespread, and pervasive, at all levels of the government and society. The constitution provides immunity from civil and criminal prosecution to the president, vice president, governors, and deputy governors.

The EFCC continued a strong anticorruption campaign during the year, arresting a number of federal, state, and local officials and seizing millions of dollars in assets. Some observers lauded the commission's actions as a centerpiece of the Obasanjo administration's war on corruption, but critics claimed that some EFCC investigations were politically motivated, singling out political opponents of the administration, and that the EFCC did not always follow proper criminal procedure. During the year the EFCC brought or threatened criminal charges against several persons intending to run as presidential candidates.

On December 27, IGP Michael Okiro announced that EFCC Chairman Nuhu Ribadu was being sent to a year-long training course. Ribadu's sudden and unexpected transfer was protested by domestic civil society and international anticorruption and human rights groups, who feared that it was an attempt to weaken the effectiveness of the country's premier antigraft institution. The government responded that the transfer was a routine administrative matter and pledged to continue the anticorruption drive.

On July 13, the EFCC arrested and charged four former governors—Chief Orji Kalu of Abia State, Saminu Turaki of Jigawa State, Reverend Jolly Nyame of Taraba State, and Joshua Dariye of Plateau State—at Kuje Medium Security Prison in Abuja with laundering money totaling almost \$400 million (50 billion naira). On August 13, the Federal High Court granted Turaki bail, and he was released.

The EFCC prosecuted former governor of Abia State, Orji Kalu, for allegedly laundering an estimated \$24.5 million (3.1 billion naira) from Abia State. The Federal High Court in Abuja remanded Kalu to Kuje Medium Security Prison, where he spent 16 days before posting bail on August 2. The attorney general attempted to have the trial discontinued based on an earlier Abia State High Court ruling that was intended to shield Kalu from arrest and trial. The EFCC and attorney general battled openly in the press over the matter, and on September 28, the EFCC filed a motion for appeal and insisted that it had the right to arrest and prosecute Kalu. The investigation and hearings continued at year's end.

On December 12, the EFCC arrested former Delta State governor James Ibori on a 103-count charge of abuse of office, corruption, and money laundering. On December 18, the Federal High Court in Kaduna denied Ibori bail and scheduled his trial to begin on January 11, 2008.

The EFCC also investigated numerous federal government officials for allegedly accepting bribes from international companies. On December 5, the government suspended dealings and canceled a supply contract with telecommunications company Siemens pending an investigation into allegations it gave more than \$14 million (1.6 billion naira) in bribes to federal officials. Also in December, the EFCC investigated numerous federal officials over a \$6 million (700 million naira) bribe paid by Wilbros Group Incorporated to facilitate a gas pipeline contract. Investigations were ongoing at year's end.

On December 4, former governor of Ekiti State, Ayodele Fayose—who went into hiding soon after his October 2006 impeachment for his role in embezzling \$9.4 million (1.2 billion naira) from the state—returned home to Ado, the capital of Ekiti State. On December 17, Fayose surrendered to the EFCC to defend himself against allegations that he took money totaling \$101 million (11.8 billion naira) from Ekiti State. The Federal High Court in Lagos remanded Fayose to Ikoyi Prison in Lagos on a 51-count charge of fraud, money laundering, and illegal diversion of public funds. Fayose pleaded not guilty but was denied bail. On December 22, while still in custody, the Ekiti High Court issued a warrant for Fayose's arrest for the murder of Tunde Omojola in 2005. At year's end Fayose was scheduled to appear in the Ekiti High Court on January 10, 2008.

In August former Plateau State governor Joshua Dariye was released on bail following his November 2006 impeachment on corruption charges for allegedly embezzling money intended for the Plateau State treasury. On March 10, after a court of appeals ordered Dariye reinstated as governor, the Plateau State government announced its intention to appeal to the Supreme Court. On April 27, the Supreme Court refused the appeal of the Plateau State government and ordered Dariye's immediate reinstatement. He remained in office until the inauguration of new governor on May 29. On July 19, Dariye was remanded to prison by the Abuja High Court for alleged corruption and granted bail on July 29.

Complicit prison and hospital officials reportedly forged death certificates for convicted drug offenders to aid their escape from prison. In the 18-month period between January 2005 and August 2006, approximately 200 convicted drug offenders escaped in this manner. In some cases drug offenders paid other persons to serve their prison sentences. Despite reports that in 2006 President Obasanjo ordered the attorney general to form a commission to further investigate these preliminary findings, there was no evidence that a committee was formed during the year.

On July 26, Bayelsa State Governor Diepreye Alamieyeseigha, who was arrested in the United Kingdom in 2005 on charges of money laundering and was denied bail in 2006, pleaded guilty before a Nigerian court to six of the charges and was sentenced to two years in prison on each charge. However, since the sentences were set to run concurrently and the time was counted from the point of his arrest nearly two years prior, he was released due to time already served two hours after being taken to prison. The court also ordered the confiscation and forfeiture of his assets, which allegedly consisted of six companies, nine properties located in several countries, and funds in excess of \$20.4 million (2.4 billion naira). The federal government also brought charges against Alamieyeseigha, but they were dropped on December 13, when the attorney general withdrew the case, citing double jeopardy since the charges were identical to those Alamieyeseigha was found guilty of previously.

There were no laws providing for access to information, and the government provided limited access in practice. Although both houses of the National Assembly passed a Freedom of Information Bill earlier in the year, the bill had to be resubmitted after the new administration took office in May. At year's end the bill was again before the House and Senate.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights



A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

On September 26, in an incident that observers described as a government effort to intimidate local civil society groups, the SSS detained and charged with espionage the director of an NGO that worked to promote conflict management in the Delta region, Judith Asuni, and her Nigerian colleague Danjuma Saidu. Two German filmmakers, Florian Optiz and Andy Lehmann, were arrested on related charges for filming oil installations in the Delta. In the process of trying to collect evidence, the SSS searched other NGO offices in the Port Harcourt area that were known to have a connection to Asuni. On November 5, Asuni was released on her own recognizance on the condition that she appear at her trial on November 12. On November 6, however, the attorney general filed a motion for the dismissal of the charges against Asuni and the other three defendants.

Numerous domestic and international NGOs were active in the country. Significant NGOs included AI, the Campaign for Democracy, the Center for Law Enforcement Education, the Committee for the Defense of Human Rights, Global Rights, Human Rights Watch (HRW), Women Trafficking and Child Labor Eradication Foundation (WOTCLEF), and the Women's Consortium of Nigeria. NGOs were generally independent of the government although some, such as WOTCLEF, which the previous vice president's wife chaired, had close government ties.

The government met with NGOs, and civil society organizations facilitated government/NGO communications.

International NGOs, including AI, HRW, and the UN Special Rapporteur on Torture, actively addressed human rights issues in the country during the year.

The NHRC, which the government tasked with monitoring and protecting human rights, had zonal affiliates in each of the country's six political regions. Since its inception, the NHRC's operations were limited by insufficient funding. The commission also lacked judicial authority and could only make nonbinding recommendations to the government.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and law prohibit discrimination based on community, place of origin, ethnic group, sex, religion, or political opinion; however, the government did not enforce the law effectively.

#### Women

The law criminalizes rape and provides substantial penalties for convictions, but societal pressures and the stigma associated with being a rape victim reduced both the percentage of rapes reported and the penalties imposed for conviction. The law recognizes spousal rape as a separate offense; however, spousal rape was difficult to prove in court, and no such prosecutions were reported during the year. Rape continued to be epidemic in universities. In November 2006 AI issued a report criticizing the judicial system for a conviction rate of only 10 percent of the total number of rape prosecutions.

Domestic violence was widespread and often considered socially acceptable. Reports of spousal abuse were common, especially wife beating. Police normally did not intervene in domestic disputes, which seldom were discussed publicly. The law permits husbands to use physical means to chastise their wives as long as it does not result in "grievous harm," which is defined as loss of sight, hearing, power of speech, facial disfigurement, or life-threatening injuries. In more rural areas, courts and police were reluctant to intervene to protect women who formally accused their husbands of abuse if the level of alleged abuse did not exceed customary norms in the areas. According to the 2003 Nigeria Demographic and Health Survey (NDHS), 64.5 percent of women and 61.3 percent of men agreed that a husband was justified in hitting or beating his wife for at least one of six specified reasons, including burning food and not cooking on time.

AI estimated that two-thirds of the women in certain communities in Lagos State experienced physical, sexual, or psychological violence in the family, with husbands, partners, and fathers responsible for most of the violence. Discriminatory laws exacerbated the problem. For example, the penalty for sexual assault of a man is more severe than the penalty for the same offense against a woman.

The NDHS estimated that approximately 19 percent of the female population had been subjected to FGM, although the incidence had declined steadily in recent years. While practiced in all parts of the country, FGM was much more prevalent in the southern region among the Yoruba and Igbo. Women from northern states were less likely to undergo the most severe type of FGM known as infibulation. The age at which women and girls were subjected to the practice varied from the first week of life until after a woman delivered her first child; however, three-quarters of the NDHS 2003 survey respondents who had undergone FGM had the procedure before their first birthday. According to the survey, the principal perceived "benefits" of FGM included maintaining chastity/virginity before marriage, giving the victim better marriage prospects, providing more sexual pleasure for men (primarily according to male respondents), and aiding safe childbirth.

The federal government publicly opposed FGM but took no legal action to curb the practice. Because of the considerable impediments that anti-FGM groups faced at the federal level, most refocused their energies on combating the practice at the state and local levels. Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers states banned FGM. However, once a state legislature criminalized FGM, NGOs found that they had to convince the Local Government Area authorities that state laws were applicable in their districts. The Ministry of Health, women's groups, and many NGOs sponsored public awareness projects to educate communities about the health hazards of FGM. They worked to eradicate the practice, but financial and logistical obstacles limited their contact with health care workers on the medical effects of FGM.

During the year there were no known prosecutions resulting from a 2005 Osun State law intended to punish persons who encouraged FGM. The law criminalizes the removal of any part of a sexual organ from a woman or a girl, except for medical reasons approved by a doctor. According to the provisions of the law, an offender is any female who offers herself for FGM; any person who coerces, entices, or induces any female to undergo FGM; and any person who other than for medical reasons performs an operation removing part of a woman or girl's sexual organs. The law provides for a fine of \$385 (50,000 naira), one year's imprisonment, or both for a first offense, and doubled penalties for a second conviction.

Prostitution was pervasive, particularly in urban areas. There are statutes at both the federal and state levels criminalizing prostitution. All states that had adopted Shari'a had criminalized prostitution, and this ban was enforced with varying degrees of success. The police frequently used the antiprostitution statutes as tools for harassment, arresting offenders and holding them until they paid a bribe, but rarely prosecuting the cases in court. Corporate prostitution—the hiring of women as corporate employees in the formal sector to perform sexual acts to attract or retain clients to a company—was a problem, particularly in the banking industry.

Trafficking in women was a problem.

Sexual harassment was a problem. There were no statutes against sexual harassment, but violent forms were adjudicated under assault statutes. The practice of demanding sexual favors in exchange for employment or university grades continued to be common. In some parts of the country, women continued to be harassed for social and religious reasons. Purdah, the cultural practice of secluding women and pubescent girls from unrelated men, continued in various parts of the north. Although women's movement was restricted during daylight hours, many women pursued economic and social activities outside the home in the evening.

Women also experienced considerable economic discrimination. While there are no laws barring women from particular fields of employment, women often experienced discrimination under traditional and religious practices. The Nigerian NGOs Coalition expressed concern regarding continued discrimination against women in the private sector, particularly in access to employment, promotion to higher professional positions, and salary equality. There were credible reports that several businesses operated with a "get pregnant, get fired" policy. Women remained underrepresented in the formal sector but played an active and vital role in the country's informal economy. While the number of women employed in the business sector increased every year, women did not receive equal pay for equal work and often found it extremely difficult to acquire commercial credit or to obtain tax deductions or rebates as heads of households. Unmarried women in particular endured many forms of discrimination.

Although some women made considerable individual progress in both the academic and business worlds, women overall remained marginalized. Although women were not legally barred from owning land, under some customary land tenure systems only men could own land, and women could gain access to land only through marriage or family. In addition many customary practices did not recognize a woman's right to inherit her husband's property, and many widows were rendered destitute when their in-laws took virtually all of the deceased husband's property.

In some parts of the country, widows experienced unfavorable conditions as a result of discriminatory traditional customs and economic deprivation. "Confinement," which occurred predominantly in the east, was the most common rite of deprivation to which widows were subjected. Confined widows were under social restrictions for as long as one year and usually were expected to shave their heads and dress in black as part of a culturally mandated mourning period. In other areas a widow was considered a part of her husband's property, to be "inherited" by his family. Shari'a personal law protects widows' property rights, and an NGO reported that many women succeeded in protecting their rights in Shari'a courts.

Polygyny is legal and continued to be practiced widely among many ethnic and religious groups.

Women in the 12 northern states were affected to varying degrees by Shari'a. In Zamfara State local governments enforced laws requiring the separation of Muslim men and women in transportation and health care. Kano State's 2005 ban prohibiting commercial motorcycle taxis from taking women as passengers continued. The state government did not cite any specific Koranic references in announcing the ban. However, non-Muslim women were not affected by the ban, and the state government purchased motorcarriages (similar to motorized rickshaws) for the use of Muslim women. Bauchi, Niger, and Zamfara states offered similar transportation options.

The testimony of women was not given the same weight as that of men in many criminal courts.

## Children

The government seldom enforced even the inadequate laws designed to protect the rights of children.

Public schools continued to be substandard, and limited facilities precluded access to education for many children. The law calls for the government, "when practical," to provide free, compulsory, and universal primary education; however, compulsory primary education rarely was provided, and the numerous required school fees meant schooling was not free. A 2004 NDHS survey showed primary school net attendance rates of 64 percent for boys and 57 percent for girls, with approximately 96 percent of those attending completing five years of primary education. Secondary school net attendance was considerably lower, at 38 percent for boys and 33 percent for girls. In many parts of the country, girls were discriminated against in access to education for social and economic reasons. When economic hardship restricted families' ability to send girls to school, many girls were directed into activities such as domestic work, trading, and street vending. Many families favored boys over girls in deciding which children to enroll in secondary and elementary schools. The literacy rate was 58 percent for men but only 41 percent for women.

While most schools in the north traditionally separated children by gender, the law requires this practice in Zamfara, Sokoto, and Kebbi state schools.

To produce a smaller gap between boys' and girls' access to education, the UN Children's Fund (UNICEF) collaborated with the government on a Strategy for Acceleration of Girls Education in Nigeria, which resulted in the launch of the Girls' Education Project (GEP) in 2004. The GEP proved to be successful as enrollment for girls improved as did attendance and retention rates. During the year the government allocated \$7 million (822 million naira) for the provision of water and sanitation facilities at schools. However, the GEP was scheduled for completion by year's end, leaving the local governments responsible for maintaining the progress.

Girls and boys had equal access to government health care. However, girls were much more likely than boys to receive complete immunizations from childhood diseases. Complete immunization rates were 17 percent for girls and 9.1 percent for boys.

FGM was commonly performed on girls in southern areas of the country.

Cases of child abuse, abandoned infants, child prostitution, and physically dangerous child labor practices remained common throughout the country. The government criticized child abuse and neglect but did not undertake any significant measures to stop traditional practices harmful to children, such as the sale of young girls into marriage. There were credible reports that poor families sold their daughters into marriage as a means to supplement their incomes. Young girls sometimes were forced into marriage as soon as they reached puberty, regardless of age, to prevent the "indecent" associated with premarital sex or for other cultural and religious reasons. Human rights groups reported sexual assaults and rapes of young girls, especially in the north.

Numerous children were homeless and lived on the streets. According to the Consortium for Street Children, there were no known statistics on numbers of street children in the country. Major factors that caused children to turn to the streets included instability in the home, poverty, hunger, abuse and violence by parents, and displacement caused by clashes in the community. HIV/AIDS also had a tremendous impact on the numbers of orphaned street children.

In the north, an estimated two million children were "almajirai," or children whose parents sent them from their rural homes to urban areas with the expectation that they would study and live with Islamic teachers. Instead of receiving an education, however, many almajirai became child beggars who were forced to work manual jobs or beg for money that was then turned over to their teacher. The religious leaders often did not provide the almarajai with sufficient shelter or food, and many of these children were effectively homeless.

## Trafficking in Persons

Although the law prohibits trafficking in persons, persons were trafficked to, from, and within the country.

The country was a source, transit, and destination country for trafficked persons during the year. No government or NGO estimates on the extent of trafficking were available, but the magnitude of the problem was believed to be significant. This was based on several factors, including the number of deportees returned to the country and reports of Nigerians stranded along trafficking routes, particularly in North African countries. The largest segment of trafficking victims rescued by the National Agency for Prohibition of Trafficking in Persons (NAPTIP) came from Akwa Ibom and Edo states. In August 2006 the executive director of the Women's Consortium for Nigeria stated that the country, and Ogun State in particular, was a strategic location for traffickers engaged in sourcing, transit, and exporting persons to other countries. In 2005 the International Labor Organization (ILO) estimated that 40 percent of child street peddlers were trafficking victims.

Nigerians were trafficked to Europe, the Middle East, and other countries in Africa for the purposes of forced labor, domestic servitude, and sexual exploitation. Girls and women were trafficked for forced prostitution and domestic labor to Italy, France, Spain,



Norway, Belgium, the Netherlands, Ireland, the United Kingdom, and countries in West and Central Africa. UNICEF estimated between 50,000 and 70,000 African female trafficking victims were in Italy for prostitution, of which 70 percent were from Nigeria. Children were trafficked for involuntary domestic and agricultural labor and street peddling within the country and to countries in West and Central Africa. Both women and children were trafficked to Saudi Arabia for the purposes of prostitution, sexual exploitation, and labor. There also were reports that trafficked children were used as camel jockeys in the Middle East. The country was a destination country for children trafficked for forced labor from other West African countries, primarily Benin. UNICEF estimated approximately 5,000 Beninese children were trafficked into Abeokuta, Ogun State, and forced to work in the granite mines.

Women and children were most at risk of being trafficked. Boys were trafficked primarily to work as forced bondage laborers, street peddlers, and beggars, while girls were trafficked for domestic service, street peddling, and commercial sexual exploitation. Trafficking in children, and to a lesser extent in women, occurred within the country's borders. Children in rural areas were trafficked to urban centers to work as domestics, street peddlers, merchant traders, and beggars.

The UN Office of Drugs and Crime reported that individual criminals and organized criminal groups conducted trafficking, often involving relatives or other persons already known to the victims. Traffickers employed various methods during the year. Many were organized into specialties, such as document and passport forgery, recruitment, and transportation. To recruit young women, traffickers often made false promises of legitimate work outside the country. Traffickers also deceived child victims and their parents with promises of education, training, and salary payments. Once away from their families, children were subjected to harsh treatment and intimidation. Traffickers subjected victims to debt bondage, particularly victims forced into prostitution. In some cases traffickers employed practitioners of traditional magic to threaten victims with curses to procure their silence. Victims were transported by air, land, and sea. Established land routes to Europe transited Benin, Togo, Ghana, Cote d'Ivoire, Guinea, Mali, Niger, Libya, and Morocco.

The law prohibits human trafficking and provides for penalties including monetary fines, imprisonment, deportation, forfeiture of assets and passport, and liability for compensation to victims in civil proceedings. Imprisonment terms range from 12 months to life, while fines range from \$375 (50,000 naira) to \$1,500 (200,000 naira).

NAPTIP, a 200-employee agency with 60 investigators and 30 prosecutors dedicated to trafficking, bears primary responsibility for combating trafficking. The NPF and the Nigerian Immigration Service (NIS) also had antitrafficking units. Following his election, President Yar'Adua dismissed the special assistant on trafficking named by former president Obasanjo.

The government continued to devote resources to curb trafficking during the year but it was not enough to adequately combat the problem. Enforcement efforts continued to improve, the number of trafficking cases investigated and prosecuted during the year increased, and recordkeeping improved as NAPTIP, NPF, and NIS roles were more clearly defined through a series of NAPTIP-sponsored meetings, conferences, training sessions, and networking events.

Preliminary data indicated that during the year NAPTIP investigated 80 new cases, prosecuted 23 new cases, and obtained four convictions. At year's end there were 34 cases pending. Observers attributed the low conviction rate to witnesses' reluctance to testify and the slow progress of cases through the courts.

The NPF Antitrafficking Task Force was established in 2005 and staffed 22 units in states with the worst trafficking problems. Officials complained of inadequate resources, citing insufficient funding to support investigative field work.

The government increased collaboration on investigations with concerned law enforcement agencies in the Netherlands, France, Spain, Italy, and Benin. Officials attended international workshops on trafficking, and the government collaborated with Benin to arrest traffickers and repatriate trafficking victims. In August UNICEF and NAPTIP held a border coordination forum along the Nigeria-Benin border to discuss cross-border trafficking issues.

Reports continued from informants and foreign officials that law enforcement officers and individuals in the immigration and airport authorities collaborated in trafficking persons across the country's borders. NAPTIP was very active in providing sensitization, including to police and customs in attending training. The law provides punitive measures for officials who aid or abet trafficking; however, NAPTIP and NPF had found no evidence of official complicity, and no officials were prosecuted, tried, or convicted of trafficking-related charges. In 2006 one police inspector was arrested in Abuja for releasing two trafficking suspects after receiving specific orders to hold them, but he was later released due to lack of evidence.

The government provided limited funding for assistance to victims. NAPTIP served as the point of contact for immigration and police officials when victims were found; 615 victims passed through the agency during the year. NAPTIP directly provided overnight shelter to victims, and agency officials connected victims to nongovernmental or international organizations for shelter, counseling, and reintegration assistance. NAPTIP maintained a hot line for victims and anyone seeking or wanting to provide information regarding trafficking. The hot line received approximately 50 calls during the year, which was significantly fewer than the 500 reported for 2006. This decrease was largely due to a change in the hot line number when NAPTIP headquarters was relocated and

the government's inadequate effort to publicize the new number. During the year the government helped victims in some cases to repatriate to their home countries and reunited trafficked children with their families.

The Ministry of Employment, Labor, and Productivity, in collaboration with the ILO, NAPTIP, the police, and other federal agencies, provided food, transportation, and other logistical assistance to reunite internally and externally trafficked children with their families. In 2006 the ministry used funding from the ILO International Program on the Elimination of Child Labor (IPEC) to repatriate 350 trafficked child laborers to their countries of origin; however, this funding was not available during the year, and the ministry did not repatriate any child trafficking victims during the year. The government continued to operate the 120-bed shelter in Lagos, with involvement by the International Organization for Migration and the American Bar Association. NAPTIP also operated shelter facilities at secure locations in Abuja, Benin City, Uyo, and Kano.

The government provided some funding for protection activities. For victims serving as witnesses, divisional police officers were appointed to serve as witness protection officers. NAPTIP officials and the police officers worked together to provide assistance. NAPTIP outreach efforts were based on a series of "townhall" meetings organized in conjunction with NGOs to bring together community leaders, traditional leaders, teachers, school children, and other groups to raise awareness of the dangers of trafficking, legal protections, and available resources. Several state governments in the south continued strong efforts to protect victims. In Edo State Idia Renaissance operated a youth resource center, funded by UNICEF and foreign organizations, that provided job-skill training and counseling to trafficking victims and other youths.

The stakeholder forum, established by NAPTIP in 2003, met monthly in each state and quarterly in Abuja, conducted training of security and immigration officials, and held meetings with local government leaders to raise awareness of trafficking issues. NAPTIP officials met with several major traditional leaders to raise their awareness regarding trafficking and the antitrafficking law. NAPTIP also worked with the media to raise awareness among the public, and officials appeared on national talk shows and state programs. The government continued implementing the ILO/IPEC West Africa Cocoa Agriculture Project to prevent the trafficking or employment of children in commercial agriculture, especially cocoa production.

Twenty-nine state-level antitrafficking committees consisted of immigration officials, civil society organizations, law enforcement agents, and federal ministries in 29 states. These groups were charged with coordinating action in trafficking cases among their respective organizations. Several state governments continued to make significant prevention efforts during the year, including awareness campaigns among at-risk populations. NAPTIP's Public Enlightenment Unit also conducted several awareness events throughout the country.

#### Persons with Disabilities

There are no laws that prohibit discrimination against persons with physical and mental disabilities in employment, education, access to health care, or the provision of other state services. There are no laws requiring physical accessibility for person with disabilities.

Persons with disabilities faced social stigma, exploitation, and discrimination, and were often regarded by their own families as a source of shame. Children with disabilities who could not contribute to family income were seen as a liability, and in some cases were severely neglected. Significant numbers of indigent persons with disabilities begged on the streets.

The federal government ran vocational training centers in Abuja and Lagos to provide training to indigent persons with disabilities. Individual states also provided facilities to assist blind and physically incapacitated individuals to become self-supporting. Persons with disabilities established a growing number of self-help NGOs such as the Hope for the Blind Foundation in Zaria and the Kano Polio Victims Trust Association.

#### National/Racial/Ethnic Minorities

The country's population was ethnically diverse and consisted of more than 250 groups, many of which were concentrated geographically and spoke distinct primary languages. There was no majority ethnic group. Societal discrimination on the basis of ethnicity was practiced widely by members of all ethnic groups and was evident in private-sector hiring patterns, de facto ethnic segregation of urban neighborhoods, and a low rate of intermarriage across major ethnic and regional lines. There was a long history of tension among some ethnic groups.

Many groups complained of insufficient representation in government office.

The law prohibits ethnic discrimination by the government, but claims of marginalization continued, particularly by members of southern groups and Igbos. In particular the ethnic groups of the Niger Delta continued their calls for high-level representation on petroleum problems and within the security forces. The constitution requires that the federal government have a "national character," meaning that cabinet and high-level positions are distributed to persons representing each of the 36 states. Traditional



relationships continued to be used to impose considerable pressure on individual government officials to favor their own ethnic groups for important positions and patronage.

In April 2006 HRW published a report describing discrimination against nonindigenes. While all citizens have the right to live in any part of the country, state and local governments frequently discriminated against those not judged to be indigenous to the area, occasionally compelling individuals to return to a part of the country from which their ethnic group originated but to which they have no personal ties. On different occasions, individual nonindigenes were compelled to move by government use of bulldozers, threats with clubs and torches, and discrimination in hiring and employment. When they were allowed to stay rather than be removed, these persons experienced discrimination including denial of scholarships and exclusion from employment in the civil service, police, and the military.

In Plateau State, the Hausa and Fulani, most of whom were Muslim and considered nonindigenes, claimed to face significant discrimination from the local government in scholarships and government representation.

Ethnic groups claimed environmental degradation and government indifference to their status in the oil-producing Niger Delta region. Groups continued to express unhappiness regarding the economic exploitation and the environmental destruction of their homelands, and incidents of ethnic conflict and confrontation with government officials and forces continued in the Delta area.

Religious difference often mirrored regional and ethnic differences and resulted in numerous deaths and the displacement of thousands of persons during the year.

Interethnic fighting in Warri, Delta State, continued to wane following a 2004 ceasefire between rival ethnicities.

Interethnic fighting elsewhere in the Delta also led to the displacement of tens of thousands of local inhabitants. For example, on August 21, Rivers State Governor Celestine Omechia announced plans to demolish 25 slum districts along the waterfront in the southern city of Port Harcourt. According to Omechia, the slums, which housed between 50,000 and 100,000 persons, have become hiding places and landing points for the militia fighters and armed gangs that have terrorized the city. Ethnic leaders expressed fear that clearing these districts could cause ethnic conflict between the local Ijaws and Ikwere who live in the affected areas. On October 26, the Supreme Court nullified Omechia's election and replaced him with Rotimi Ameechi, who put the plans on hold for the time being.

Conflict over land rights and ownership continued among members of the Tiv, Kwalla, Jukun, and Azara ethnic groups; each of these groups resided at or near the convergence of Nassarawa, Benue, and Taraba states.

#### Other Societal Abuses and Discrimination

Homosexuality is illegal under federal law; homosexual practices are punishable by prison sentences of up to 14 years. In the 12 northern states that had adopted Shari'a law, adults convicted of engaging in homosexual intercourse are subject to execution by stoning, although no such sentences were imposed during the year. Because of widespread taboos against homosexuality, very few persons were openly homosexual.

During the year the National Assembly considered an antigay marriage bill that would duplicate existing laws on marriage and sexual relations while making it more difficult for advocacy groups to operate. The bill had not passed by the end of the year.

There was widespread discrimination against persons living with HIV/AIDS, which the public considered a disease resulting from immoral behavior. Persons living with HIV/AIDS often lost their jobs or were denied health care services. However, public education campaigns were implemented to reduce stigma and change perceptions of the disease.

#### Section 6 Worker Rights

##### a. The Right of Association

The law provides all citizens with the right to form or belong to any trade union or other association for the protection of their interests, and while workers exercised this right in practice, some statutory limitations on the right of association and on trade unions restricted this right. Some of these restrictions were put in place to curb the practice of forming thousands of small unions with as few as three or four employees each.

Workers, except members of the armed forces and employees designated as essential by the government, may join trade unions. Essential workers included government employees in the police, customs, immigration, prisons, the federal mint, and the Central Bank. The government's application of the "essential worker" designation was broad compared to the ILO definition. Employees

working in a designated Export Processing Zone (EPZ) may not join a union until 10 years after the establishment of the enterprise.

According to figures provided by the Michael Imoudou National Institute for Labor Studies, eight million workers belonged to unions. Approximately 60 percent of formal sector workers belonged to a union. With the exception of a small number of workers engaged in commercial food processing, the agricultural sector, which employed the majority of the work force, was not organized. The informal sector, and small and medium enterprises, remained largely unorganized.

Trade union federations, now called "central labor organizations," must be registered formally by the government. Each federation must consist of 12 or more trade unions, and trade union membership in a federation must be exclusive. A minimum of 50 workers per enterprise is required to form a trade union.

#### b. The Right to Organize and Bargain Collectively

The law allows unions to conduct their activities without interference; however, the law also narrowly defines what union activity is legal. The law provides for the right to both organize and bargain collectively between management and trade unions, and collective bargaining occurred throughout the public sector and the organized private sector. However, collective bargaining in the private sector was restricted. The law limits the right to strike to matters pertaining to breach of contract or wages and conditions of work, thereby prohibiting strikes over matters of national economic policy; however, the ILO ruled that this policy is contrary to ILO conventions. The government chose not to enforce this provision of the law during the June strike over fuel prices and other national policy issues.

Workers outside the legally defined category of "essential" had the right to strike, although they were required to provide advance notice of a strike. A worker under a collective bargaining agreement cannot participate in a strike unless his union complied with the requirements of the law, which included provisions for mandatory mediation and for referral of the dispute to the government. Workers can bring labor grievances to the judicial system for review; however, the courts did not ensure due process in the protection of workers' rights. Workers are specifically prohibited from forcing persons to join a strike or from closing airports or obstructing public by-ways. Stiff fines and/or prison sentences are imposed on law breakers.

There were no developments in the June 2006 case in which at least four representatives of the National Association of Telecommunications Employees were released without charge after being arrested when employees of the national telephone company went on strike because they had not been paid in months.

There are no laws prohibiting retribution against strikers and strike leaders, but strikers who believed they were victims of unfair retribution could submit their cases to Industrial Arbitration Panel (IAP), with the approval of the Labor Ministry. The IAP's decisions were binding on parties but could be appealed to the National Industrial Court. In practice the decisions of these bodies infrequently carried the force of law. Union representatives described the arbitration process as cumbersome, time-consuming, and an ineffective deterrent to retribution against strikers.

Workers and employers in EPZs were subject to sections of the national labor laws pertaining to EPZs, which provided for a 10-year prohibition on trade unions, strikes, or lockouts following the commencement of operations within a zone. In addition the law allows the EPZ Authority, instead of workers' organizations or unions, to handle the resolution of disputes between employers and employees.

#### c. Prohibition of Forced or Compulsory Labor

Although the law prohibits forced or compulsory labor, including by children, there were reports that it occurred. Enforcement of the law was not effective in many parts of the country. During the year the government undertook training and sensitization programs in several regions to improve enforcement.

#### d. Prohibition of Child Labor and Minimum Age for Employment

In most sectors the minimum work age is 15 years, which is consistent with the age for completing educational requirements; however, child labor remained a problem. The law prohibits employment of children less than 15 years of age in commerce and industry and restricts other child labor to home-based agricultural or domestic work. The law states that children may not be employed in agricultural or domestic work for more than eight hours per day. Apprenticeship of youths at the age of 13 is allowed under specific conditions.

High numbers of children worked as beggars, street peddlers, bus conductors, and domestic servants in urban areas. Children were also involved in the agricultural sector. Little data was available to analyze the incidence of child labor. The National Modular Child Labour Survey Nigeria, which conducted the only survey available between 2000 and 2001, reported approximately 15 million children working in the country. Of these, more than six million were not attending school and more than two million were working

15 or more hours per day.

The Ministry of Employment, Labor, and Productivity dealt specifically with child labor problems and had an inspections department whose major responsibilities included enforcement of legal provisions relating to conditions of work and protection of workers. Although the inspectorate employed nearly 400 total inspectors for all business sectors, there were fewer than 50 factory inspectors for the entire country. The agency reportedly received no complaints of child labor. The ministry conducted inspections mostly in the formal business sector, in which the incidence of child labor was not a significant problem. NAPTIP bears some responsibility for enforcing child labor laws, though it primarily rehabilitates trafficking victims and child labor victims.

The government's child labor policy focused on intervention, advocacy and sensitization, legislation, the withdrawal of children from improper labor situations, and rehabilitation and education for children following their withdrawal. The Ministry of Employment, Labor, and Productivity was responsible for enforcement of the law. During the year the ministry conducted 110 child labor inspections, 410 regular labor inspections, and four comprehensive inspections. In 2006 the ministry also trained approximately 120 labor inspection officers on child labor laws; trained 80 officers to perform inspections in high-risk sectors such as agriculture, mining, and the informal sector; and trained 20 officers to perform rapid assessment surveys in these critical sectors. Reports of the surveys conducted by these officers were not yet available at year's end. The ministry also sponsored awareness-raising and law-familiarization training programs for local law enforcement, customs, and other government officials. Despite these advances, forced child labor and trafficking in children continued during the year.

Awareness of child labor increased throughout civil society, and the government demonstrated its commitment to addressing the problem throughout the year. The Ministry of Employment, Labor, and Productivity drafted a National Policy on Child Labor as well as a National Plan of Action for the Elimination of the Worst Forms of Child Labor in Nigeria. By year's end both drafts had been submitted to the Federal Executive Council for approval.

In an effort to prevent and withdraw children from the worst forms of child labor, the Ministry of Labor established and upgraded skills acquisition and vocational training centers.

Private and government initiatives to stem the incidence of child employment continued but were ineffective. The government continued to implement the ILO/IPEC Sustainable Tree Crop Program (STCP) in the cocoa and other agricultural subsectors to combat hazardous child labor and to prevent child trafficking for labor exploitation. Akwa Ibom, Ondo, Cross River, and Abia states participated in the STCP during the year.

#### e. Acceptable Conditions of Work

The law sets a minimum wage, which was reviewed infrequently by a tripartite committee which provides recommendations to the National Assembly. Real wages greatly exceeded the minimum wage. Following the June national labor strike, the minimum wage was increased 15 percent to \$68.45 (8,625 naira) per month (with a 13-month year as the law mandates an extra month's pay for the Christmas holiday). The national minimum wage did not provide a decent standard of living for a worker and family. The government directed each state administration to establish its own salary structure based on its ability to pay, with a floor of at least the national minimum wage. Some federal ministries, states, and private sector companies raised their minimum wage for all employees to \$71.42 (9,000 naira). However, there were complaints that the minimum wage was not being implemented in some states. In Ekiti, Oyo, and Ondo, public sector workers protested the late payment or nonpayment by state governments of the 15 percent raise. As of early September workers in Ekiti and Ondo were able to reach an agreement with their governors, and the increase was implemented. The Ministry of Employment, Labor, and Productivity is responsible for monitoring compliance of the minimum wage which was strictly enforced for companies with more than 50 employees. When a company with fewer than 50 employees was found to pay less than the minimum wage, the ministry reviewed the company's records to determine whether it was capable of paying the minimum wage and then issued a ruling.

The law mandates a 40-hour workweek, two to four weeks' annual leave, and overtime and holiday pay, except for agricultural and domestic workers. The law prohibits excessive compulsory overtime for civilian government employees. Labor leaders reported that the law can be interpreted as prohibiting some forms of excessive, compulsory overtime; however, workplace health and safety conditions were not properly patrolled, and enforcement was irregular due to insufficient police and the small number of factory inspectors. The law also establishes general health and safety provisions, some of which were aimed specifically at young or female workers. It requires that the inspectorate division of the Ministry of Employment, Labor, and Productivity inspect factories for compliance with health and safety standards. However, this agency was greatly underfunded, lacked basic resources and training, and consequently did not sufficiently enforce safety oversight at many enterprises, particularly construction sites and other nonfactory work locations. The law requires employers to compensate injured workers and dependent survivors of those killed in industrial accidents; however, the law was not strictly enforced. The Factories Law provides for the protection of employees in hazardous situations, including the right to remove themselves from such situations; however, the law did not provide similar provisions for other workers.

The labor laws apply to legal foreign workers, but not all companies respected these laws in practice.

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